

**IMPEACHMENT INQUIRY:  
WILLIAM JEFFERSON CLINTON,  
PRESIDENT OF THE UNITED STATES**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED FIFTH CONGRESS  
SECOND SESSION  
IMPEACHMENT INQUIRY PURSUANT TO H. RES. 581:  
APPEARANCE OF INDEPENDENT COUNSEL

NOVEMBER 19, 1998

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**Serial No. 66**



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BRIAN P. WOOLFOLK, <i>Counsel</i>	



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**IMPEACHMENT INQUIRY:  
WILLIAM JEFFERSON CLINTON,  
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**THURSDAY, NOVEMBER 19, 1998**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to call, at 10:10 a.m., in room 2141, Rayburn House Office Building, Hon. Henry J. Hyde (chairman of the committee) presiding.

Present: Representatives Henry J. Hyde; F. James Sensenbrenner, Jr.; Bill McCollum; George W. Gekas; Howard Coble; Lamar S. Smith; Elton Gallegly; Charles T. Canady; Bob Inglis; Bob Goodlatte; Steve Buyer; Ed Bryant; Steve Chabot; Bob Barr; William L. Jenkins; Asa Hutchinson; Edward A. Pease; Christopher B. Cannon; James E. Rogan; Lindsey O. Graham; Mary Bono; John Conyers; Barney Frank; Charles E. Schumer; Howard L. Berman; Rick Boucher; Jerrold Nadler; Robert C. "Bobby" Scott; Melvin L. Watt; Zoe Lofgren; Sheila Jackson Lee; Maxine Waters; Martin T. Meehan; William D. Delahunt; Robert Wexler; Steven R. Rothman; and Thomas M. Barrett.

Majority Staff Present: Thomas E. Mooney, Sr., general counsel-chief of staff; Jon W. Dudas, deputy general counsel-staff director; Diana L. Schacht, deputy staff director-chief counsel; Daniel M. Freeman, parliamentarian-counsel; Joseph H. Gibson, chief counsel; Rick Filkins, counsel; Sharee M. Freeman, counsel; John F. Mautz, IV, counsel; William Moschella, counsel; Stephen Pinkos, counsel; Sheila F. Klein, executive assistant to general counsel-chief of staff; Annelie Weber, executive assistant to deputy general counsel-staff director; Samuel F. Stratman, press secretary; Rebecca S. Ward, office manager; James B. Farr, financial clerk; Elizabeth Singleton, legislative correspondent; Sharon L. Hammersla, computer systems coordinator; Michele Manon, administrative assistant; Joseph McDonald, publications clerk; Shawn Friesen, staff assistant/clerk; Robert Jones, staff assistant; Ann Jemison, receptionist; Michael Connolly, communications assistant; Michelle Morgan, press secretary; and Patricia Katyoka, research assistant.

Subcommittee on Commercial and Administrative Law Staff Present: Ray Smietanka, chief counsel; Jim Harper, counsel; and Audray Clement, staff assistant.

Subcommittee on the Constitution Staff Present: John H. Ladd, chief counsel; and Cathleen A. Cleaver, counsel.

Subcommittee on Courts and Intellectual Property Staff Present: Mitch Glazier, chief counsel; Blaine S. Merritt, counsel; Vince Garlock, counsel; and Debra K. Laman.

Subcommittee on Crime Staff Present: Paul J. McNulty, director of communications-chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, counsel; and Nicole R. Nason, counsel.

Subcommittee on Immigration and Claims Staff Present: George M. Fishman, chief counsel; Laura Ann Baxter, counsel; and Jim Y. Wilon, counsel.

Majority Investigative Staff Present: David P. Schippers, chief investigative counsel; Susan Bogart, investigative counsel; Thomas M. Schippers, investigative counsel; Jeffrey Pavletic, investigative counsel; Charles F. Marino, counsel; John C. Kocoras, counsel; Diana L. Woznicki, investigator; Peter J. Wacks, investigator; Albert F. Tracy, investigator; Berle S. Littmann, investigator; Stephen P. Lynch, professional staff member; Nancy Ruggero-Tracy, office manager/coordinator; Patrick O'Sullivan, staff assistant; and Heather McLaughlin, staff assistant.

Minority Staff Present: Julian Epstein, minority chief counsel-staff director; Perry Apelbaum, minority general counsel; Samara T. Ryder, counsel; Brian P. Woolfolk, counsel; Henry Moniz, counsel; Robert Raben, minority counsel; Stephanie Peters, counsel; David Lachmann, counsel; Anita Johnson, executive assistant to minority chief counsel-staff director; and Dawn Burton, minority clerk.

Minority Investigative Staff Present: Abbe D. Lowell, minority chief investigative counsel; Lis W. Wiehl, investigative counsel; Deborah L. Rhode, investigative counsel; Kevin M. Simpson, investigative counsel; Steven F. Reich, investigative counsel; Sampak P. Garg, investigative counsel; and Maria Reddick, minority clerk.

#### **OPENING STATEMENT OF CHAIRMAN HYDE**

Mr. HYDE. Pursuant to notice, I now convene the committee for a hearing pursuant to House Resolution 581, the resolution which the House adopted authorizing an inquiry into whether to recommend impeachment of the President of the United States. The Chair intends to recognize himself for 5 minutes and the ranking minority member for 5 minutes. Each member may be permitted to place an opening statement into the record. After the two opening statements, my own and the ranking member's, the Chair intends to recognize the witness, the Independent Counsel, Mr. Starr.

Without objection, after Mr. Starr's presentation, the Chair will recognize minority counsel, Mr. Lowell, for 30 minutes to question the witness, majority counsel, Mr. Schippers, for 30 minutes to question the witness, and subsequent to questioning by committee counsel, each member will be recognized to ask questions under the 5-minute rule. Subsequent to members' questions, the President's counsel will be recognized for 30 minutes to question the witness, and the Chair recognizes Mr. Delahunt, the gentleman from Massachusetts.

Mr. DELAHUNT. Thank you, Mr. Chairman. I have a motion at the desk.

Mr. HYDE. The Clerk will report the—why don't you read it, Mr. Delahunt.

Mr. DELAHUNT. I move the counsel to the President be recognized for two hours to question the witness.

Mr. HYDE. Well, the Chair states that Mr. Starr is here to help us adduce and understand the facts. The hearing today is not a trial, nor is it White House vs. Ken Starr or Republican vs. Democrat. Rather, the hearing today is another step in our attempt to carry out our constitutional duty to determine whether facts exist which indicate that the President of the United States committed an impeachable offense. If this committee and the full House determine the President has committed an impeachable offense, a trial may be held in the Senate.

With this in mind, the Chair believes the time allotments for questioning are eminently fair. As far as giving the President an opportunity to present his version of the facts, I would first ask the President and his counsel to respond to the 81 questions we submitted to him two weeks ago. This will go a long way to helping us gather and understand the facts involved in this matter.

Furthermore, the President has a standing invitation to come before this committee for any amount of time and present us with his version of the facts.

As I compute the timing for questioning the witness, the Democrats, including the President's counsel, have 140 minutes of questioning time; the Republicans, 135. The Democrats are permitted two separate counsel, that is to say the Democrat members, Mr. Lowell and the President's counsel. We have one. Our counsel will get a half-hour, Mr. Lowell will get a half-hour, Mr. Kendall will get a half-hour. So I do not see any imbalance there.

Mr. Lowell, the Democratic counsel, will go before any of the elected members at Mr. Conyers' request, and I am happy to grant that. The President's counsel will have unlimited time to present his witnesses at the end of our hearings when they are ready to do so.

So the rule that we are operating under, which is the same rule that was used in the Rodino era, Rule IV of the impeachment inquiry rule, specifically states that the President's counsel may question any witness subject to instructions from the chairman respecting the time, scope and duration of the examination.

So, with that statement, the gentleman's motion is denied.

Mr. DELAHUNT. Mr. Chairman, I move to strike the last word.

Mr. HYDE. The gentleman is not recognized for that purpose.

Mr. FRANK. Mr. Chairman, point of order.

Mr. HYDE. What is the point of order?

Mr. FRANK. The point is the gentleman from Massachusetts made a motion. The Chair spoke to the motion and denied under the rules the right of the gentleman who made the motion to respond to it. I make the point of order that the gentleman is entitled to his recognition.

Mr. HYDE. I am sorry, I was distracted. What is the point of order?

Mr. FRANK. The gentleman made a motion. The Chair recognized the gentleman to make a motion. The Chair then spoke to the motion and is now denying the maker of the motion the right under our rules to speak to his own motion. The gentleman has a right under our rules to be recognized to speak to our motion.

Mr. HYDE. I recognize the gentleman. Go ahead. I have ruled on the gentleman's motion.

Mr. DELAHUNT. Thank you, Mr. Chairman. The committee has given the Independent Counsel a full two hours to present his version of the facts, a version which most Americans are already fully familiar with. At the same time, the majority has seen fit to give the President's counsel all of 30 minutes to question Mr. Starr. This is meant to be the President's sole opportunity to confront his accuser during these proceedings.

Mr. HYDE. Would the gentleman yield for just a second?

Mr. DELAHUNT. I will not yield. I submit this is a grave disservice, not only to the President but to the integrity of these proceedings. It is a complete and unwarranted departure from the precedents of this House. During the Watergate hearings of 1974, President Nixon's counsel, James St. Clair, was given all the time he needed to respond to the evidence and cross-examine witnesses.

This is as it should be. We are talking about the impeachment of the President of the United States, a grave constitutional moment in our national history.

I know that some members of the Watergate Committee argued that the President's counsel, Mr. St. Clair, should be given limited time to speak, but those views were wisely overruled in the interests of fairness and decency.

President Clinton is entitled to the same consideration and respect shown to President Nixon on that occasion, no more and no less. The record of the Watergate hearings makes clear that at no time was Mr. St. Clair given a time limit for his presentation or his examination of witnesses.

Is there any legitimate basis for a different rule today? The majority may point out that the Watergate testimony was heard in closed session while today we sit before the cameras and the American people. Yet that being true, it is more important, not less, that the President be given a full and fair opportunity to respond to the charges that are being leveled against him. They may argue, as they did in a recent letter to the White House, that the President and his counsel are here, and I am quoting, "only as a matter of courtesy and not of right."

In other words, "be glad that we are letting you testify at all." With all due respect, Mr. Chairman, if the goal is justice, this cannot be a satisfactory response.

A 30-minute presentation is especially inadequate when one considers that Mr. Starr has been preparing for weeks a presentation that the White House saw for the first time last night. According to news accounts, the witness has spent the better part of the past several weeks conducting videotaped practice sessions. The President's counsel has had all of 16 hours to prepare his response.

Precedent has been abandoned at almost every turn. We rushed to release Mr. Starr's transmittal within hours of its receipt before any review by this committee or the President's counsel. We posted thousands of pages of secret grand jury testimony on the Internet and we abdicated our responsibility to make an independent examination of the facts before voting to commence an impeachment inquiry.

Let us do this right. I urge support for the motion and yield back the balance of my time.

Mr. HYDE. The gentleman has made a point that the President needs more time to present—you said “present.” He will be given all the time in the world to present, unlimited time. Today’s hearing is to hear from Judge Starr and to question him.

Mr. WATT. Point of order, Mr. Chairman.

Mr. HYDE. I don’t yield for any points of order. I would like to make my statement.

Mr. WATT. I thought you had already made your statement, Mr. Chairman.

Mr. HYDE. I know that is what you thought. But you couldn’t possibly know when I am through with my statement or not.

Mr. WATT. Under the rules under which we are operating, Mr. Chairman, we don’t know anything about the process. We had regular order at one point. I am asking for regular order. I am requesting regular order. Regular order is we get 5 minutes to address this issue. The Chairman has already had his 5 minutes.

Mr. HYDE. I want to tell this committee, and especially the Democrats, I had a meeting with Mr. Conyers and Mr. Frank a couple of days ago, and I suggested I would be very liberal with the gavel, and if Mr. Kendall is on a line of questioning that he deems pertinent, I don’t intend to shut anybody off. Now, you are disrupting the continuity of this meeting with these adversarial motions.

Mr. WATT. We are disrupting a railroad, it seems like, Mr. Chairman.

Mr. BUYER. Regular order.

Mr. HYDE. The gentleman will observe decorum, and I would appreciate it if you would speak when you are recognized. I have not recognized you.

Ms. JACKSON LEE. Mr. Chairman. I would like a point of information, Mr. Chairman. I appreciate being recognized for a point of information.

Mr. HYDE. Now, I am trying to be cooperative. I said I would be liberal in giving people time and I recognize Mr. Frank.

Mr. FRANK. Mr. Chairman, I thank you. We did have that meeting and you accommodated one of our requests particularly in terms of the order, and you did say you would be with regard to Mr. Lowell, we talked about it, not on a strict gavel. But I did think with regard to the President’s counsel request, we were not authorized to speak entirely for that. We could speak for our counsel. It does seem to me there is a reasonable difference of opinion here and we ought to vote on it. I don’t think it will delay the committee process. Have the vote and we will decide it.

Mr. CONYERS. I call for a record vote.

Mr. FRANK. We did accept the assurance with regard to Mr. Lowell, but not with regard to the independent party of the White House.

Mr. CONYERS. Mr. Chairman, I call for a record vote.

Mr. HYDE. Very well. The record vote is on the motion—

Mr. NADLER. Mr. Chairman.

Mr. HYDE. Just a moment, Ms. Jackson Lee, I have got to recognize Mr. Nadler. Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, before we vote, I would like to speak to Mr. Delahunt's motion. I appreciate the Chair's comments, but the fact is that as of now today is the only noticed day for a hearing of this committee. We have been noticed that some witnesses will be called for depositions. But as of today, Mr. Starr is the only witness that we are aware of before the committee considering the impeachment of the President. As such, given any consideration of fairness and equity, the President's counsel and for that matter the Democratic committee counsel should have as much time as they request. There should not be a time limit on it.

The President's counsel requested 90 minutes. That should be without question granted. If he asked for 5 hours, that should be granted. We have requested an hour for our counsel, and I don't know what assurances have been given, but I heard the Chair say 30 minutes. That should be an hour.

The fact is Mr. Chairman, your calculation of 135 minutes and 140 minutes is inaccurate, Mr. Starr is going to sit here for 120 minutes and tell us why the President ought to be impeached in his opinion and he is entitled to do that. But you add to that the other time, one side is going to have 260 minutes and the other side is going to have 135 minutes.

Now, I really suggest if the President of the United States asks that this committee in its one day of scheduled hearings should have 90 minutes to cross-examine Mr. Starr, that is the least that can be asked. I have looked at lists of questions and subjects which Mr. Starr's report and frankly his statement that we got last night raises some obvious questions. There is a lot more than can be addressed in 30 minutes there. The Constitution guarantees the right of anyone who is accused of any wrongdoing, and fundamental fairness guarantees the right of anyone, to have the right to confront the witness against him. Mr. Starr is the only witness.

Frankly, that right ought not to be limited to 30 minutes. So, I support Mr. Delahunt's motion and I hope that in the interests of fairness, because, you know, this proceeding must not only be fair, it must be seen to be fair. If we end up—

Mr. HYDE. Thank you, Mr. Nadler. I want to recognize Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much. I would like to take this opportunity for a point of information and also to speak briefly to the motion of Mr. Delahunt.

First of all, I think it would be well to clarify the point that the President's counsel stands as the President's counsel. The Democrats and the Democratic counsel of the House stand separately in their responsibility to the impeachment process. So to collectively add up numbers to suggest that we have in total some 200, 100, 5 minutes, whatever it may be, Mr. Chairman, I would respectfully disagree. For instance in the St. Clair representation of Mr. Nixon, he had an unlimited amount of time, because it was distinct under the Rodino Watergate Committee. This committee alludes to the fact that they had a separate responsibility from the House Democrats. And I respect that, because ultimately, with my colleagues I must vote up or down on articles of impeachment.

Secondly, let me say, Mr. Chairman, in terms in the context of justice in America, we have always argued that justice is blind, but we have never argued that justice is gagged. You cannot have the defense in a courtroom sitting gagged and bound without any opportunity to refute the accused's overwhelming opportunity to speak. We allow a defense of the accused in the courtroom. And I respect the procedure of this very awesome and somber occasion. But I cannot for the life of me understand, Mr. Chairman, why we would gag and bind the counsel for the White House, the counsel for the President. When we did it with the Chicago 7, we never recovered from the tainted process. I certainly don't equate this with that, but I would argue that we should never repeat history and gag the defense counsel on this particular issue.

So, I would ask with all due respect that we recognize that the President's counsel is the President's counsel, the House is separate, and we should allow each their time to speak. I would ask that we vote for Mr. Delahunt's motion.

Mr. HYDE. The Chair would like to suggest to the gentlewoman with respect, the Chair doesn't intend to bind and gag anybody.

Ms. JACKSON LEE. I appreciate that, Mr. Chairman.

Mr. HYDE. Anybody.

Ms. JACKSON LEE. I appreciate that. I would like for us to go ahead and approve the motion by acclamation.

Mr. HYDE. I didn't hear the end. You want a motion by acclamation?

Ms. JACKSON LEE. I would ask both Republicans and Democrats to support Mr. Delahunt's motion of fairness by acclamation, taking up the point that the chairman just made that he has no intention to gag and bind the voice of the counsel of the President of the United States. I would ask that we accept his motion by acclamation, both Republicans and Democrats. I yield back my time.

Mr. SENSENBRENNER. Point of Order, Mr. Chairman.

Mr. HYDE. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, the entire purpose of this meeting here today is to get Mr. Starr's testimony and to ask a reasonable amount of questions of Mr. Starr to find out why he did what he did and why he reached the conclusions that he did.

Having a couple of hours of parliamentary haggling relative to the procedure of today's hearing I think denigrates the dignity of this hearing. I have great confidence in the fairness of Mr. Hyde. Mr. Hyde has presided over this committee in an extremely fair manner for the almost 4 years that he has served as chairman. I think that the complaints that we are hearing from the other side of the aisle insinuate that Mr. Hyde will not conduct this hearing fairly. I don't think that there are any facts in evidence that Mr. Hyde is not going to conduct this hearing fairly. I think we should vote down the motion, we should get on with Judge Starr's testimony, the questions that will be asked by the various counsels, and see how it goes. But the people over on the other side of the aisle, I think, are saying that this is going to be a railroad before the whistle even blows and the train leaves the station.

Let's hear what Judge Starr has to say, conduct a dignified hearing, and let's get to the merits of this issue rather than who gets to talk how long.

Mr. HYDE. The gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, notwithstanding that Maxine Waters is our fairness cop, I move for a vote on the pending motion.

Mr. HYDE. Without objection, the previous question is ordered. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. No.

The CLERK. Mr. Sensenbrenner votes no.

Mr. McCollum.

Mr. MCCOLLUM. No.

The CLERK. Mr. McCollum votes no.

Mr. Gekas.

Mr. GEKAS. No.

The CLERK. Mr. Gekas votes no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith votes no.

Mr. Gallegly.

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly votes no.

Mr. Canady.

Mr. CANADY. No.

The CLERK. Mr. Canady votes no.

Mr. Inglis.

Mr. INGLIS. No.

The CLERK. Mr. Inglis votes no.

Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte votes no.

Mr. Buyer.

Mr. BUYER. No.

The CLERK. Mr. Buyer votes no.

Mr. Bryant.

Mr. BRYANT. No.

The CLERK. Mr. Bryant votes no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. Barr.

Mr. BARR. No.

The CLERK. Mr. Barr votes no.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins votes no.

Mr. Hutchinson.

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson votes no.

Mr. Pease.

Mr. PEASE. No.

The CLERK. Mr. Pease votes no.

Mr. Cannon.

Mr. CANNON. No.  
The CLERK. Mr. Cannon votes no.  
Mr. Rogan.  
Mr. ROGAN. No.  
The CLERK. Mr. Rogan votes no.  
Mr. Graham.  
Mr. GRAHAM. No.  
The CLERK. Mr. Graham votes no.  
Mrs. Bono.  
Mrs. BONO. No.  
The CLERK. Mrs. Bono votes no.  
Mr. Conyers.  
Mr. CONYERS. Aye.  
The CLERK. Mr. Conyers votes aye.  
Mr. Frank.  
Mr. FRANK. Aye.  
The CLERK. Mr. Frank votes aye.  
Mr. Schumer.  
Mr. SCHUMER. Aye.  
The CLERK. Mr. Schumer votes aye.  
Mr. Berman.  
Mr. BERMAN. Aye.  
The CLERK. Mr. Berman votes aye.  
Mr. Boucher.  
Mr. BOUCHER. Aye.  
The CLERK. Mr. Boucher votes aye.  
Mr. Nadler.  
Mr. NADLER. Aye.  
The CLERK. Mr. Nadler votes aye.  
Mr. Scott.  
Mr. SCOTT. Aye.  
The CLERK. Mr. Scott votes aye.  
Mr. Watt.  
Mr. WATT. Aye.  
The CLERK. Mr. Watt votes aye.  
Ms. Lofgren.  
Ms. LOFGREN. Aye.  
The CLERK. Ms. Lofgren votes aye.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. Aye.  
The CLERK. Ms. Jackson Lee votes aye.  
Ms. Waters.  
Ms. WATERS. Aye.  
The CLERK. Ms. Waters votes aye.  
Mr. Meehan.  
Mr. MEEHAN. Aye.  
The CLERK. Mr. Meehan votes aye.  
Mr. Delahunt.  
Mr. DELAHUNT. Aye.  
The CLERK. Mr. Delahunt votes aye.  
Mr. Wexler.  
Mr. WEXLER. Aye.  
The CLERK. Mr. Wexler votes aye.  
Mr. Rothman.

Mr. ROTHMAN. Aye.

The CLERK. Mr. Rothman votes aye.

Mr. Barrett.

Mr. BARRETT. Aye.

The CLERK. Mr. Barrett votes aye.

Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde votes no.

Mr. Chairman, there are 16 ayes and 21 noes.

Mr. HYDE. And the motion is not agreed to. The Chair recognizes himself for 5 minutes for purposes of making an opening statement.

This morning we commence our second public hearing in fulfillment of the mandate imposed on us in House Resolution 581. While the business of impeachment is rare, and happily so, it becomes necessary from time to time when circumstances require that it be exercised as a constitutional counterbalance to allegations of serious abuse of presidential power. It is part of the series of checks and balances that exemplify the genius of our Founding Fathers.

Throughout our history, we have had a number of impeachment inquiries, but this one represents a historical first. Never before has an impeachment inquiry arisen because of a referral from an Independent Counsel under Section 595(c) of the statute. For that reason, we have no precedent to follow on the involvement of the Independent Counsel in our proceedings. However, it seems both useful and instructive that we should hear from him, since he is the person most familiar with the complicated matters the House has directed us to review.

We are holding this hearing to learn the facts surrounding this situation, including those in the referral that Judge Starr sent us September 9, 1998, and to determine whether those facts justify our voting on articles of impeachment. Everyone should understand how this process works. Under the Constitution, the House of Representatives has the sole power to make accusations, known as articles of impeachment. They may do so by a majority vote. If the House makes such accusations, they are then sent to the Senate for trial. The Senate may convict by a two-thirds vote. Our Founding Fathers wisely determined that one Chamber should accuse and the other should judge.

We began our work on November 9 at the hearing when we were enlightened by the testimony of two panels of outstanding academics about the history and nature of the impeachment process. Today the search for the truth continues as we turn to the underlying facts, and as we begin that search we turn to one person, Judge Starr, who has a comprehensive overview of the complex issues we face.

I thought we should have that overview before we hear from other witnesses. As we announced earlier this week, we will hear from other witnesses in live hearings and in depositions as we move towards a final resolution. In addition, we have yet to hear from the President, and I can assure my colleagues if and when the President would want to testify, he may have unlimited time to do

so. In any event, we are hopeful that the pledge of cooperation we received from his attorneys will soon be fulfilled.

Let me repeat my new year's resolution. It is my fervent hope we will be able to conclude this inquiry before the new year turns. I am hopeful that all members will bear this in mind as we conduct this search for truth with all deliberate speed.

There are many voices telling us to halt this debate, that the people are weary of it all. There are other voices suggesting we have a duty to debate the many questions raised by the circumstances in which we find ourselves, questions of high consequence for constitutional government. David Broder, writing in the Washington Post yesterday, suggested that in our hearings "we will define as a Nation the standard of honesty we are going to impose on our President."

What is the significance of a false statement under oath? Is it essentially different from a garden variety lie, a mental reservation, a fib, an evasion, a little white lie, hyperbole? In a court proceeding, do you assume some trivial responsibility when you raise your right hand and swear to God to tell the truth, the whole truth and nothing but the truth? And what of the rule of law, that unique aspect of a free society that protects you from the fire on your roof or the knock on your door at 3 a.m.? What does lying under oath do to the rule of law? Do we still have a government of laws and not of men? Does the law apply to some people with force and ferocity, while the powerful are immune? Do we have one set of laws for the officers and another for the enlisted? Should we?

These are but a few questions these hearings are intended to explore. And just perhaps when the debate is over, the rationalizations and the distinctions and the semantic gymnastics are put to rest, we may be closer to answering for our generation the haunting question asked 139 years ago in a small military cemetery in Pennsylvania, whether a Nation conceived in liberty and dedicated to the proposition that all men are created equal can long endure.

The Chair now recognizes the ranking minority member of this committee, Mr. Conyers, for 5 minutes for his opening statement.

Mr. CONYERS. Mr. Chairman and my colleagues on the Judiciary Committee, we meet today for only the third time in the history of our Nation to take evidence in an inquiry of impeachment against a President of the United States.

Today's witness, Kenneth W. Starr, wrote the tawdry, salacious and unnecessarily graphic referral that he delivered to us in September with so much drama and fanfare, and now the majority members of this committee have called that same prosecutor forward to testify in an unprecedented desperation effort to breathe new life into a dying inquiry.

It is fundamental to the integrity of this inquiry to examine whether the Independent Counsel's evidence is tainted, whether conclusions are colored by improper motive. In short, it is relevant to examine the conduct of the Independent Counsel and his staff or where their behavior impacts directly on the credibility of the evidence in the referral.

For example, the committee must determine whether Mr. Starr improperly threatened witnesses if they would not provide incriminating evidence against the President of the United States, wheth-

er Mr. Starr's partisan interests affected the collection and presentation of evidence, and whether Mr. Starr himself violated the law by leaking uncensored grand jury material to humiliate the President.

Mr. Chairman and members of the committee, contrary to the views that have been expressed by Chairman Hyde in letters to me this week, these are not collateral issues at all. They go to the very heart of Mr. Starr's referral. To turn a blind eye to these issues is to continue an unfair and partisan process.

Now, no one defends the President's conduct, but even Republican witnesses at our hearing only last week testified that even if the alleged facts are proven true, they simply do not amount to impeachable offenses. The idea of a federally paid sex policeman spending millions of dollars to trap an unfaithful spouse, or to police civil litigation would have been unthinkable prior to the Starr investigation.

Let there be no mistake, it is not now acceptable in America to investigate a person's private sexual activity. It is not acceptable to force mothers to testify against their daughters, to make lawyers testify against their clients, to require Secret Service agents to testify against the people they protect, or to make bookstores tell what books people read.

It is not acceptable for rogue attorneys and investigators to trap a young woman in a hotel room, discourage her from calling her lawyer, ridicule her when she asks to call her mother. But the report suggests, I am sorry to say, that is precisely how Kenneth W. Starr has conducted this investigation.

An Independent Counsel must do justice both in the specific matter he is investigating and to the system of justice as a whole. While an Independent Counsel can and should pursue a case with vigor, I and many others believe that Mr. Starr has crossed that line into obsession.

When I talk about obsession, sir, I wonder why Mr. Starr encouraged Linda Tripp to continue to betray and entrap her young, unsuspecting friend, and to allow her to continue her illegal tape recordings without court approval? And when I talk about obsession, I wonder why Mr. Starr ignored his ethical obligations and failed to disclose his involvement in the *Paula Jones* case, which could have disqualified him from this point of the investigation.

Is it just coincidence that even before he was appointed Independent Counsel Mr. Starr was already in contact with lawyers for Paula Jones? Is it just coincidental that Mr. Starr, until recently, drew a \$1 million a year salary from his law firm that represents the tobacco industry which is fighting President Clinton's effort to deter teen smoking?

Is it just a coincidence that this Independent Counsel accepted a prestigious job at a university funded by one of the President's most persistent and vocal critics, Richard Mellon Scaife?

Is it just a coincidence that the Independent Counsel failed to provide this committee with important exculpatory evidence in his referral, casually glossing over the central part of Monica Lewinsky's testimony, when she clearly stated that "no one promised me a job; no one asked me to lie about her relationship with the President?"

Perhaps Mr. Starr will persuade us not to be concerned about these matters. But he surely carries the burden of showing us and the American people that these things did not affect his fairness nor his impartiality.

Nor do I understand why Mr. Starr declined to provide the Democratic members of the committee with copies of documents that we have repeatedly requested. Mr. Starr even says that the President should be impeached because he invokes privilege, but he is quick to raise the privilege argument when questioned about his own conduct, and did so this week when Democrats sought documents concerning his conduct.

Over the course of this investigation, the Independent Counsel complained publicly, and still does, that a lack of cooperation was impeding his investigation, and yet he has now afforded members of the committee the same treatment about which he has complained. This causes us to question Mr. Starr's motives and to lack confidence in his referral.

His conduct over the past week has only reinforced my doubts. On Friday, Mr. Starr shipped two new boxes of documents to us and announced an indictment dating back to events occurring before Bill Clinton was even President, pre-1992.

On Tuesday, the same day that our Republican colleagues suggested that they might want to expand this impeachment inquiry, contrary to the chairman's stated desire to close it down, Mr. Starr shipped four new boxes of documents to us, and last night we learned that Mr. Starr now sees fit for this committee to consider Whitewater or other alleged improprieties that he did not see fit to mention in his referral. The sense of desperation in the face of a failed impeachment inquiry is palpable.

Finally, Mr. Chairman, I would be remiss in my duties if I did not observe that to date our committee process has not been bipartisan nor fair. All this committee has done since September 9 is to, in a partisan matter, dump salacious grand jury material on a public that does not want it. It was you, Chairman Hyde, who said this process could not proceed unless it was bipartisan. We need to do better than 11th hour unilateral decisions to subpoena witnesses having little to do with the underlying referral. We need to do better in offering the President a full and fair opportunity to participate in these hearings. We have many questions about the way you have conducted your investigation, Mr. Starr. Fairness dictates that the committee and the American people learn whether you have created a climate for the purpose of driving a President from office who has twice been elected by the people of this great Nation.

Mr. HYDE. I thank the gentleman.

Today our witness is Judge Kenneth W. Starr. On August 5, 1994, the Special Division of the United States Court of Appeals for the District of Columbia Circuit appointed Judge Starr to investigate what has become known as the Whitewater matter. Since that time, Attorney General Reno and the Special Division added several other matters, including the White House Travel Office and the FBI files matters, to Judge Starr's jurisdiction. After his submission of evidence, they further added what has become known as the Lewinsky matter.

Judge Starr has a Bachelor's Degree from the George Washington University, a Master's Degree from Brown University, and a Juris Doctor Degree from Duke University. He then clerked for Judge David Dyer of the United States Court of Appeals for the 5th Circuit and Chief Justice Warren Burger of the Supreme Court of the United States.

After serving on President Reagan's transition team, Judge Starr served as counselor to Attorney General William French Smith from 1981 to 1983. In 1983, President Reagan nominated him to serve as a judge on the United States Court of Appeals for the District of Columbia and he was confirmed by the Senate.

Judge Starr served on the D.C. Circuit until 1989, when President Bush nominated him to be the Solicitor General of the United States. As Solicitor General, Judge Starr was responsible for representing the United States before the Supreme Court.

In November 1993, Democrats on the Senate Ethics Committee chose him to serve as a hearing examiner to review Senator Packwood's diaries for relevant information. Since August 1994, Judge Starr has conducted the investigation of Whitewater and the other matters that have been assigned to him by Attorney General Reno and the Special Division. That investigation has led to the conviction of 14 persons, including a sitting Governor of Arkansas in two separate cases, the former number three person in the United States Department of Justice, and two former business partners of the President. Six other indictments are currently pending in the courts.

More pertinent to today's hearing, Judge Starr's investigation has led to the first ever impeachment referral under section 595(c) of the independent counsel statute. That referral has given rise to the impeachment inquiry we are now conducting.

With that, Judge Starr, would you please rise so that I may administer the oath.

[Witness sworn.]

Mr. HYDE. Thank you. Let the record reflect the witness responded in the affirmative. Mr. Starr, you may proceed.

**STATEMENT OF HON. KENNETH STARR, INDEPENDENT COUNSEL, OFFICE OF THE INDEPENDENT COUNSEL, WASHINGTON, D.C.**

Mr. STARR. Thank you, Mr. Chairman. I welcome this opportunity to be before the committee.

Mr. HYDE. Would you pull the mike up?

Mr. STARR. I was just told to push my mike away.

Mr. HYDE. By a Democrat, I am sure.

Mr. STARR. The person did not identify his affiliation in saying that. But this is my first opportunity to publicly report on certain issues and aspects of our work, and I look forward to doing so and seeking to assist the committee.

I appreciate both the seriousness of the committee's work and the gravity of its assignment. I have reviewed the statements made by the 37 members at the October 5 hearing, and any citizen who watched that hearing would have been impressed by the depth and the breadth of the discussion that day.

Mr. COBLE. Mr. Chairman, I apologize for interrupting Judge Starr, but, Judge, could you pull the mike a little closer.

Mr. STARR. Yes, I will keep pulling.

So I appear before you today in the wake of your own hearings, both on October 5 and in the hearings to which the Chair just referred, with great respect and awareness of the difficulty of your task.

As you know, in January of this year and as the chairman indicated, the Attorney General of the United States petitioned the Special Division of the United States Court of Appeals for this jurisdiction, the panel that oversees independent counsels, and, at the Attorney General's request, the Special Division granted authority to us to investigate whether Monica Lewinsky or others committed Federal crimes relating to the sexual harassment lawsuit brought by Paula Jones against the President.

Our office conducted a swift yet thorough investigation. We completed the primary factual investigation in under 8 months, notwithstanding a number of obstacles in our path.

The law requires, as the chairman indicated, an independent counsel to report to the House of Representatives substantial and credible information that an impeachable offense may have been committed.

On September 9, pursuant to our statutory duty, we submitted a referral and we submitted backup documentation to the House, as Mr. Conyers has noted, and I am here today at your invitation, in furtherance of our statutory obligation.

Let me say at the outset that I recognize that it is the House of Representatives and not an independent counsel which enjoys the sole power to impeach. My role today is to discuss our referral and the underlying investigation.

Let me then begin with an overview. As our referral explains, the evidence suggests that the President made false statements under oath and thwarted the search for truth in *Jones v. Clinton*. The evidence further suggests that the President made false statements under oath to the grand jury on August 17 of this year. That same night, the President publicly acknowledged an inappropriate relationship, but maintained that his testimony had been legally accurate.

The President also declared that all inquiries into the matter should end because, he said, it was private.

But shortly after the President's August 17 speech, Senators Lieberman, Kerrey and Moynihan stated that the President's actions were not a private matter. In our view they were correct. Indeed, the evidence suggests that the President repeatedly tried to thwart the legal process in the *Jones* matter and in the grand jury investigation. That is not a private matter. The evidence further suggests that the President in the course of those efforts misused his authority and his power as President and contravened his duty to faithfully execute the laws. That, too, is not a private matter.

The evidence suggests that the misuse of Presidential authority occurred in the following 10 ways:

First, the evidence suggests that the President made a series of premeditated false statements in his civil deposition on January 17, 1998. Those are statements under oath. The President had

taken an oath to tell the truth, the whole truth, and nothing but the truth. By making false statements under oath, the President, the Chief Executive of our Nation, failed to adhere to that oath and to his Presidential oath to faithfully execute the laws.

Second, the evidence suggests that apart from making false statements under oath, the President engaged in a pattern, a pattern of behavior during the *Jones* litigation, to thwart the judicial process. The President reached an agreement with Ms. Lewinsky that each would make false statements under oath. He provided job assistance to Ms. Lewinsky at a time when the *Jones* case was proceeding and Ms. Lewinsky's truthful testimony would have been harmful. He engaged in an apparent scheme to conceal gifts that had been subpoenaed from Ms. Lewinsky. He coached a potential witness, his own secretary, Ms. Currie, with a false account of relevant events.

Those acts constitute a pattern of obstruction that is fundamentally inconsistent with the President's duty to faithfully execute the law.

Third, the evidence suggests that the President participated in a scheme at his civil deposition in which his attorney in his presence deceived a United States district judge in an effort to cut off questioning about Ms. Lewinsky. The President did not correct his attorney's statement. A false statement to a Federal judge in order to shortcut and to prevent relevant questioning is an obstruction of the judicial process.

Fourth, the evidence suggests that on January 23, 1998, after the criminal investigation had become public, the President made false statements to his Cabinet and used his Cabinet as unwitting surrogates to publicly support the President's false story.

Fifth, the evidence suggests that the President, acting in a premeditated and calculated fashion, deceived the American people on January 26, and on other occasions, when he denied a relationship with Ms. Lewinsky.

Sixth, the evidence suggests that the President, after the criminal investigation became public, made false statements to his aides and concocted false alibis that these government employees repeated to the grand jury sitting at the United States courthouse. As a result, the grand jury here in Washington received inaccurate information.

Seventh, having promised the American people to cooperate with the investigation, the President refused six invitations to testify before the grand jury. Refusing to cooperate with a duly authorized Federal criminal investigation is inconsistent with the general statutory duty of all executive branch employees to cooperate with criminal investigations. It also is inconsistent with the President's duty to faithfully execute the laws.

Eighth, the President and his administration asserted three different governmental privileges to conceal relevant information from the grand jury. The privilege assertions were legally baseless in these circumstances. They were inconsistent with the action of Presidents Carter and Reagan in similar circumstances, and they delayed and impeded the investigation.

Ninth, the President made false statements under oath to the grand jury on August 17, 1998. The President again took an oath

to tell the truth, the whole truth, and nothing but the truth. The evidence demonstrates that the President failed to adhere to that oath and thus to his Presidential oath to faithfully execute the laws.

Tenth, the evidence suggests that the President deceived the American people in his speech on August 17 by stating that his testimony had been legally accurate.

In addition to these 10 points, it bears mention that well before January of 1998, the President used governmental resources and prerogatives to pursue his relationship. The evidence suggests that the President used his secretary, Betty Currie, a government employee, to facilitate and to conceal the relationship with Ms. Lewinsky. The President used White House aides and the United States Ambassador to the United Nations in his effort to find Ms. Lewinsky a job, at a time when it was foreseeable, even likely, that she would be a witness in the *Jones* case. And, the President used a governmental attorney, Bruce Lindsey, to assist his personal legal defense during the *Jones* case.

In short, the evidence suggests that the President repeatedly used the machinery of government and the powers of his high office to conceal his relationship, to conceal the relationship from the American people, from the judicial process in the *Jones* case, and from the grand jury.

Let me turn, then, to the legal context in which these issues first arose. At the outset, I want to emphasize that our referral never suggests that the relationship between the President and Ms. Lewinsky in and of itself could constitute a high crime or misdemeanor. Indeed, the referral never passes judgment on the President's relationship with Ms. Lewinsky. The propriety of a relationship is not the concern of our office.

The referral is instead about obstruction of justice, lying under oath, tampering with witnesses, and the misuse of power. The referral cannot be understood without appreciating this vital distinction.

This case or matter thus raises the following initial question: Is a plaintiff in a sexual harassment lawsuit entitled to obtain truthful information from the defendant, and from associates of the defendant, in order to support her claim? That should be easy to answer. No citizen who finds himself accused in a sexual harassment case or in any other kind of case can lie under oath or otherwise obstruct justice, and thereby prevent the plaintiff from discovering evidence and presenting her case.

Paula Jones, a former Arkansas State employee, filed a Federal sexual harassment suit against President Clinton in 1994. The President denied those allegations. We will never know whether a jury would have credited the allegations. We will also never know whether the ultimate decisionmaker would have found that the alleged facts, if true, constitute sexual harassment. When the President and Ms. Jones settled the case last week, the Eighth Circuit Court of Appeals in St. Louis was still considering the preliminary legal question whether the facts, as alleged, could constitute sexual harassment.

After the suit was first filed in 1994, the President attempted to delay the trial, or more broadly the proceedings, until his Presi-

gency had concluded. The President claimed a temporary Presidential immunity from civil suit, and the case proceeded through the court of appeals to the Supreme Court of the United States. At oral argument, the President's attorney specifically warned our Nation's highest court that if Ms. Jones prevailed, her lawyers would be able to investigate the President's relationships with other women as is common in sexual harassment cases. The Supreme Court rejected the President's constitutional claim of immunity and did so by a 9-to-0 vote. The Court concluded that the Constitution did not provide such a temporary immunity from suit.

The idea was simple and powerful: No one is above the law. The Supreme Court sent the case back to trial with words that warrant emphasis. These are the words of our unanimous Supreme Court: "Like every other citizen who invokes" the district court's jurisdiction, Ms. Jones, the words of the Court again, "has a right to an orderly disposition of her claims."

After the Supreme Court's decision, the parties started to gather the facts. The parties questioned relevant witnesses in depositions. They submitted written questions. They made requests for documents.

Sexual harassment cases are often "he said-she said" kinds of disputes. Evidence reflecting the behavior of both parties can be critical, including the defendant's relationships with other employees in the workplace.

Such questions can be uncomfortable, but they occur every day in courts and law offices across our country. Individuals in those cases take an oath to tell the truth, the whole truth, and nothing but the truth. And no one is entitled to lie under oath simply because he or she does not like the questions or because he believes the case is frivolous, or that it is financially motivated or politically motivated. The Supreme Court has emphatically and repeatedly rejected the notion that there is ever a privilege to lie. The Court has stated that there are ways to object to questions. Lying under oath is not one of them.

During this fact-gathering process, Judge Susan Webber Wright in Little Rock followed standard principles of sexual harassment cases. Over repeated objections from the President's attorneys, the judge permitted inquiries into the President's relationships with government employees. On January 8, 1998, for example, Judge Wright stated that questions as to the President's relationships with other government employees, in the words of the judge, "are within the scope of issues in this case."

In making these rulings, Judge Susan Webber Wright recognized that the questions might prove embarrassing. She stated in her words, "I have never had a sexual harassment case where there was not some embarrassment." She also stated that she could not protect the parties from embarrassment.

Let me summarize the five points that explain how the President's relationship with Ms. Lewinsky, what was otherwise private conduct, became a matter of concern to the courts. This is critical to fully understand the nature of the committee's inquiry.

One: the President was sued for sexual harassment in Federal court, and the Supreme Court of the United States ruled in that case that the case should go forward.

Two: The law of sexual harassment and the law of evidence allow the plaintiff to inquire into the defendant's relationship with other women—with women in the workplace, which in this case included the President's relationship with Ms. Lewinsky.

Three: Applying those settled legal principles, Judge Susan Webber Wright repeatedly rejected the President's objections to such inquiries. The judge instead ordered the President to answer the questions.

Four: It is a Federal crime to commit perjury and obstruct justice in civil cases, including sexual harassment cases. Violators are subject to a sentence of up to 10 years imprisonment for obstruction and 5 years for perjury.

Five: The evidence suggests that the President and Ms. Lewinsky made false statements under oath and obstructed the judicial process in the *Jones* case by preventing the court from obtaining the truth about the relationship.

At his grand jury appearance, the President invoked a Supreme Court Justice's confirmation hearings as a comparison to his current situation. The President's use of the analogy did not fit the facts in the Monica Lewinsky case, however. But the President's having raised the analogy, let me make it more fitting to the case here.

Suppose that there is a nominee for a high government position. Assume that in the confirmation process, there is an allegation of sexual harassment. Suppose that several women other than the accuser who have worked with the nominee testify before the Senate Judiciary Committee. Suppose that the nominee then confers with one of those women ahead of time, and that they agree that they will both lie to the Senate Judiciary Committee about their relationship. Assume further that they both do lie under oath about their relationship, and suppose further that a criminal investigation develops and the nominee again lies under oath to the grand jury. If that were proved to have happened, what would the Senate Judiciary Committee do?

Suppose that the lying under oath and obstruction of justice occurs in a sexual harassment suit brought against the nominee. Suppose further that the false statements and the obstruction continue into a subsequent criminal investigation. What would this committee do with compelling evidence of perjury and obstruction of justice committed by, for example, a sitting Justice of the Supreme Court in a sexual harassment case in which he was the defendant?

Those hypotheticals, which track the facts of this case, put in sharp relief the issue that is before this committee. Let me again stress that it is this House, the House of Representatives, and not an independent counsel, that has the sole power to impeach, but I am suggesting that the consideration of our referral be focused on the issues that are actually presented by the referral.

Let me turn next to the essentials of the referral. That will include the specifics of Ms. Lewinsky's involvement in the *Jones* case and the President's actions in response to that involvement.

The key point about the President's conduct is this: On at least six different occasions from December 17, 1997, through August 17, 1998, the President had to make a decision. He could choose truth,

or he could choose deception. On all six occasions the President chose deception, a pattern of calculated behavior over a span of months.

On December 5, 1997, Ms. Jones' attorneys identified Ms. Lewinsky as a potential witness. Within a day, the President learned that Ms. Lewinsky's name was on the witness list.

After learning this, the President faced his first critical decision. Would he and Monica Lewinsky tell the truth about their relationship, or would they provide false information, not just to a spouse or to loved ones, but under oath in a court of law?

Eleven months ago, the President made his decision. At approximately 2 o'clock in the morning on December 17, 1997, the President called Ms. Lewinsky at her Watergate apartment and told her that she was on the witness list. This was news to Ms. Lewinsky. And it bears noting that the President, not his lawyer, made this call to the witness.

During this 2 a.m. conversation, which lasted approximately half an hour, the President could have told Ms. Lewinsky that they must tell the truth under oath. The President could have explained that they might face embarrassment, but that as a citizen and as the President, he could not lie under oath, and he could not sit by while Monica did so. The President did not say anything like that.

On the contrary, according to Ms. Lewinsky, the President suggested that she could sign an affidavit in the case and use, under oath, deceptive cover stories that they had devised long ago to explain why Ms. Lewinsky had visited the Oval Office area. The President did not explicitly instruct Ms. Lewinsky to lie. He did not have to do so. Ms. Lewinsky testified that the President's suggestion that they use the preexisting cover stories amounted to a continuation of the pattern of concealing their intimate relationship. Starting with this conversation, the President and Ms. Lewinsky understood, according to Ms. Lewinsky, that they were both going to make false statements under oath.

The conversation between the President and Ms. Lewinsky on December 17 was a critical turning point. The evidence suggests that the President chose to engage in a criminal act to reach an understanding with Ms. Lewinsky that they would both make false statements under oath. At that moment, the President's intimate relationship with a subordinate employee was transformed. It was transformed into an unlawful effort to thwart the judicial process. This was no longer an issue of private conduct.

Recall that the Supreme Court had concluded that Paula Jones was entitled to an orderly disposition of her claims. The President's action on December 17 was his first direct effort to thwart the mandate of the Supreme Court.

The story continued: The President faced a second choice. On December 23, 1997, the President submitted under oath a written answer to what lawyers call interrogatories, as the committee knows. The request stated in relevant part: "Please state the name of Federal employees with whom you had sexual relations when you were President of the United States." In his sworn answer, the President said, "None."

On December 28, the President faced a third critical choice. On that day, the President met Ms. Lewinsky at the White House.

They discussed the fact that Ms. Lewinsky had been subpoenaed for gifts she had received from the President. According to Ms. Lewinsky, she raised with the President the question of what she should do with the gifts. Later that day, the President's personal secretary, Betty Currie, drove to Ms. Lewinsky's Watergate home. Ms. Lewinsky gave Ms. Currie a sealed box that contained some of the subpoenaed gifts. Ms. Currie then took the box and stored it under her bed at home.

In her written proffer on February 1, 4 weeks after the fact, Ms. Lewinsky stated that Ms. Currie had called her to retrieve the gifts. If so, that necessarily would have meant that the President had asked Ms. Currie to call. It would directly and undeniably implicate him in an obstruction of justice. Ms. Lewinsky later repeated that statement in testimony under oath. Ms. Currie, for her part, recalls Ms. Lewinsky calling her, but even if Ms. Lewinsky called Ms. Currie, common sense and the evidence suggest some Presidential knowledge or involvement, as the referral explains.

Let me add another point about the gifts. In his grand jury appearance in August, the President testified that he had no particular concern about the gifts in December of 1997 when he had talked to Ms. Lewinsky about them. And he thus suggested that he would have had no reason to take part in December in a plan to conceal the gifts. But there is a serious problem with the President's explanation. If it were true that the President in December was unconcerned about the gifts, he presumably would have told the truth under oath in his January deposition about the large number of gifts that he and Ms. Lewinsky had exchanged. But he did not tell the truth. At that deposition, when asked about whether he had ever given gifts to Monica Lewinsky, and he had given her several on December 28, the President stated, "I don't recall. Do you know what they were?"

In short, the critical facts to emphasize about the transfer of gifts are these: First, the President and Ms. Lewinsky met and discussed what should be done with the gifts that had been subpoenaed from her. Second, the President's personal secretary, Ms. Currie, drove later that day to Ms. Lewinsky's home, or apartment, to pick up the gifts. Third, Ms. Currie then stored the box of gifts under her bed.

Meanwhile, the legal process continued to unfold, and the President took other actions that had the foreseeable effect of keeping Ms. Lewinsky on the team. The President helped Ms. Lewinsky obtain a job in New York. His efforts began after the Supreme Court's decision in May of 1997, at a time when it had become foreseeable that she could be an adverse witness against the President. These job-related efforts intensified in December 1997 after Ms. Lewinsky's name appeared on the witness list.

Vernon Jordan, who had been enlisted in the job search for Ms. Lewinsky, testified that he kept the President informed of the status of Ms. Lewinsky's job search and her affidavit. On January 7, 1998, Mr. Jordan told the President that Ms. Lewinsky had signed the affidavit. Mr. Jordan stated to the President that he was still working on getting her a job. The President replied, "Good." In other words, the President, knowing that a witness had just signed a false affidavit, encouraged his friend to continue trying to find

her a job. After Ms. Lewinsky received a job offer from Revlon on January 12, Vernon Jordan called the President and said, "Mission accomplished."

As is often the situation in cases involving this kind of financial assistance, no direct evidence reveals the President's intent in assisting Ms. Lewinsky in her job efforts. Ms. Lewinsky testified that no one promised her a job for silence. Of course, crimes ordinarily do not take place with such explicit discussion. But Federal courts instruct juries that circumstantial evidence is just as probative as direct evidence, and here the circumstantial evidence is strong. At a bare minimum, the evidence suggests that the President's job assistance efforts stemmed from his desire to placate Ms. Lewinsky so that she would not be tempted under the burden of an oath to tell the truth about the relationship. Monica Lewinsky herself recognized that at the time, saying to a friend, "Somebody could construe or say, 'Well, they gave her a job to shut her up. They made her happy.'"

And given that the President's plan to testify falsely could succeed only if Ms. Lewinsky went along, the President naturally had to be concerned that Ms. Lewinsky at any time might turn around and decide to tell the truth. Indeed, some wanted her to tell the truth. One of her friends, for example, talked to Ms. Lewinsky about the December 28 meeting with the President. The friend stated that she was concerned because, in her words, she "didn't want to see Monica being like Susan McDougal" and did not want Monica, the friend's words, "to lie to protect the President." Needless to say, any sudden decision by Ms. Lewinsky to tell the truth, whether out of anger at the President or simple desire to be law-abiding, would have been very harmful to the President. That helps to explain his motive in providing job assistance.

In mid-January, Ms. Lewinsky finalized her false affidavit with her attorney, who sent it to Judge Wright's court in Little Rock. The affidavit falsely denied a sexual relationship with the President. It essentially recounted the cover stories that had been discussed during that middle-of-the-night conversation on December 17.

Let me turn to the President's January 17 deposition. Some have suggested that the President might have been surprised or ambushed at the deposition. Those suggestions are wrong. The President had clear warning that there would be questions about Monica Lewinsky. She had, again, been named on the December 5 witness list. On January 12, just 5 days before the deposition, Ms. Jones's attorneys identified Ms. Lewinsky as a trial witness. In response, Judge Wright in Little Rock approved her as a trial witness. Two days later, on January 14, the President's private attorney asked Ms. Lewinsky's attorney to fax a copy of the affidavit. During the deposition itself, the President's attorney stated that the President was, in his words, "fully familiar" with the affidavit.

At the outset of his January 17 deposition, therefore, the President faced a fourth critical decision. Fully aware that he would likely receive questions about Ms. Lewinsky, would the President continue to make false statements under oath, this time in the presence of a United States district judge who would be presiding at the deposition?

At the start of the deposition here in Washington, Judge Susan Webber Wright administered the oath. The President swore to tell the truth, the whole truth, and nothing but the truth. As his testimony began, the President, in response to a question from Ms. Jones's attorneys, stated that he understood he was providing his testimony under penalty of perjury.

The President was asked a series of questions about Ms. Lewinsky. After a few questions, the President's attorney Mr. Bennett objected to the questioning about Ms. Lewinsky, referring to it as, in his words, "innuendo." Mr. Bennett produced Ms. Lewinsky's false affidavit. Mr. Bennett stated to Judge Wright that Ms. Lewinsky's affidavit indicated that, in Mr. Bennett's words, "there is absolutely no sex of any kind in any manner, shape or form." Mr. Bennett stated that the President was "fully aware of Ms. Lewinsky's affidavit." During Mr. Bennett's statements, the President sat back and let his attorney mislead Judge Susan Webber Wright. The President said not a word to the judge or, so far as we are aware, to his attorney.

Judge Wright overruled Mr. Bennett's objection. The questioning continued. In response, the President made false statements not only about his intimate relationship with Ms. Lewinsky, but about a whole host of matters. The President testified that he did not know that Vernon Jordan had met with Ms. Lewinsky and talked about the *Jones* case. That was untrue. He testified that he could not recall being alone with Ms. Lewinsky. That was untrue. He testified that he could not recall ever being in the Oval Office hallway with Ms. Lewinsky except perhaps when she was delivering pizza. That was untrue. He testified that he could not recall gifts exchanged between Ms. Lewinsky and him. That was untrue. He testified, after a 14-second pause, that he was not sure whether he had ever talked to Ms. Lewinsky about the possibility that she might be asked to testify in the lawsuit. That was untrue. The President testified that he did not know whether Ms. Lewinsky had been served a subpoena at the time he last saw her in December 1997. That was untrue. When his attorney read Ms. Lewinsky's affidavit denying a sexual relationship, the President stated that the affidavit was "absolutely true." That was untrue.

The evidence thus suggests that the President, long aware that Ms. Lewinsky was a likely topic of questioning at his deposition, made not one or two, but a series of false statements under oath. The President further allowed his attorney to use Ms. Lewinsky's affidavit, which the President knew to be false, to deceive the court. The evidence suggests that the President directly contravened the oath he had taken, as well as the Supreme Court's specific mandate in which the Court had stated that Ms. Jones was entitled, like every other citizen, to a lawful disposition of her case.

As my referral outlines, the President's deposition did not mark the end of his scheme to conceal. During his deposition testimony, the President referred to his secretary, Betty Currie. The President testified, for example, that Ms. Lewinsky had come to the White House to see Ms. Currie, that Ms. Currie had been involved in assisting Ms. Lewinsky in her job search, and that Ms. Currie had communicated with Vernon Jordan about Mr. Jordan's assistance to Ms. Lewinsky. In response to one question at the deposition, the

President said he did not know the answer and “you’d have to ask Betty.”

Given the President’s repeated reference to Ms. Currie and his suggestion to Ms. Jones’s attorneys that they contact her, the President had to know that Ms. Jones’s attorneys might want to question Ms. Currie. Shortly after 7 p.m. on Saturday, January 17 of this year, just 2½ hours after the deposition had concluded, the President attempted to contact Ms. Currie at her home. The President asked Ms. Currie to come to the White House the next day, which she did, although it was unusual for her to come in on a Sunday. According to Ms. Currie, the President appeared concerned, and he made a number of statements about Ms. Lewinsky to Ms. Currie. The statements included:

“You were always there when she was there, right? We were never really alone.”

“You could see and hear everything.”

Ms. Currie concluded that the President wanted her to agree with him when he made these statements. Ms. Currie stated that she did, in fact, indicate her agreement, although she knew that the President and Ms. Lewinsky had been alone, and that she could not hear or see them when they were alone.

Ms. Currie further testified that the President ran through the same basic statements with her again on either January 20th or the 21st.

What is important with respect to these two episodes is that at the time the President made these statements, he knew that they were false. He knew he had been alone with Ms. Lewinsky; he knew Ms. Currie could not see or hear everything. The President thus could not have been trying to refresh his recollection, as he subsequently suggested. That raises the question: Is there a legitimate explanation for the President to have said those things in that manner to Ms. Currie? The circumstances suggest not. The facts suggest that the President was attempting to improperly coach Ms. Currie at a time when he could foresee that she was a potential witness in *Jones v. Clinton*.

The President’s next major decision came in the days immediately after January 21st. On the 21st, The Washington Post reported the story of Ms. Lewinsky’s relationship with the President. After the public disclosure of his relationship with Ms. Lewinsky and the ongoing criminal investigation, the President faced a decision. Would he admit the relationship publicly, correct his testimony in the *Jones* case, and ask for the indulgence of the American people? Or would he continue to deny the truth?

For this question, the President consulted with others. According to Dick Morris, the political consultant, the President and he talked on January 21st. Mr. Morris suggested that the President publicly confess. The President replied, “But what about the legal thing? You know, the legal thing? You know, Starr and perjury and all.” Mr. Morris suggested that they take a poll. The President agreed. Mr. Morris called with the results. He stated that the American people were willing to forgive adultery, but not perjury or obstruction of justice. The President replied, “Well, we just have to win, then.”

Over the next several months, it became apparent that the strategy to win had many prongs. First, the President denied the truth publicly and emphatically. Second, he publicly promised to cooperate with the investigation. Third, the President deflected and diverted the investigation by telling aides false stories that were then related to the Federal grand jury here in Washington. Fourth, he refused invitations to testify to the grand jury for over 6 months. Fifth, his administration delayed the investigation through multiple privilege claims, each of which has been rejected by the Federal courts. Sixth, surrogates of the President attacked the credibility and the legitimacy of the grand jury investigation. Seventh, surrogates of the President attempted to convince the Congress and the American people that the matter was unimportant.

The first step was for the President to deny the truth publicly. For this, political polling led to Hollywood staging. The President's California friend and producer Harry Thomason flew to Washington and advised the President that the President needed to be very forceful in denying the relationship. On Monday, January 26, in the Roosevelt Room, before Members of Congress and other citizens, the President provided a clear and emphatic public statement denying the relationship.

The President also made false statements to his Cabinet and to his aides. They then spoke publicly and professed their belief in the President.

The second step was to promise cooperation. The President told the American people on several television and radio shows on January 21st and 22nd that, in his words, "I'm going to do my best to cooperate with the investigation."

The third step was the President's refusal to provide testimony to the grand jury, despite six invitations to do so, and despite his public promise to cooperate. Refusing invitations to provide information to a grand jury in a Federal criminal investigation, and one authorized by the Attorney General of the United States, and one in which there is a high national interest in prompt completion, was inconsistent with the January promise of the President to cooperate, and with the general statutory duty of all government officials to cooperate with Federal criminal investigations.

As a fourth step, the President not only refused to testify himself, but he authorized the use of various governmental privileges to delay the testimony of many of his taxpayer-paid assistants. The extensive use of governmental privileges against grand jury and criminal investigations has, of course, been a pattern through this administration. Most notably, the White House cited privilege in 1993 to prevent Justice Department and Park Police officials from reviewing documents in Vincent Foster's office in the days after his tragic death.

In the Lewinsky investigation, the President asserted two privileges, executive privilege and a government attorney-client privilege. A subordinate administration official, without objection from the President, claimed the previously unheard of privilege that was called the protective function privilege. The privileges were asserted to prevent full testimony of several White House aides. They were asserted to prevent the full testimony of sworn law enforcement officers of the Secret Service.

In asserting executive privilege, the President was plowing headlong into the Supreme Court's unanimous decision 24 years ago in *United States v. Richard Nixon*. There the Supreme Court ruled that executive privilege was overcome by the need for relevant information and evidence in criminal proceedings. And thus it came as no surprise that Chief Judge Norma Holloway Johnson of this district rejected President Clinton's effort to use executive privilege to prevent disclosure of relevant evidence.

In asserting protective function and government attorney-client privileges, the administration was asking the Federal courts to make up one new privilege out of whole cloth, and it was asking them to apply another privilege in a context in which no Federal court had ever applied it before. Thus, it again came as little surprise that the Federal courts rejected the administration's claims. Indeed, as to the government attorney-client claim, the D.C. Circuit and the district court, like the Eighth Circuit a year ago, stated that the President's legal position not only was wrong, but would authorize, in the court's words, "a gross misuse of public assets." The Supreme Court refused to grant review of the cases notwithstanding the administration's two strongly-worded petitions for certiorari.

This point bears emphasis: The administration justified its many privilege claims by claiming an interest in protecting the Presidency, not the President personally, but that justification is dubious for two reasons. First, Presidents Carter and Reagan waived all government privileges at the outset of criminal investigations in which they were involved. The examples set by those two Presidents demonstrate that such privileges in criminal investigations are manifestly unnecessary in order to protect the Presidency. Second, these novel privilege claims were quite weak as a matter of law.

And that raises a question: What was it about the Monica Lewinsky matter that generated the administration's particularly aggressive approach to privileges? The circumstantial evidence suggests an answer: delay. Indeed, when our office sought to have the Supreme Court of the United States decide all three privilege claims at once this past June, the administration opposed expedited consideration.

Not only did the administration invoke these three losing privileges, but the President publicly suggested that he had not invoked executive privilege, when, in fact, he had. On March 24, 1998, while traveling in Africa, the President was asked about executive privilege. He stated in response, "You should ask someone who knows. I haven't discussed that with the lawyers. I don't know." But White House counsel Charles Ruff had filed an affidavit in Federal court before Judge Johnson only 7 days earlier in which he swore that he had discussed the assertion of executive privilege with the President, and that the President had approved its invocation.

After Chief Judge Johnson ruled against the President, the President then dropped the executive privilege claim in the Supreme Court, and then in August, the President explained to the grand jury why he had dropped the claim. The President stated, "I didn't

really want to advance an executive privilege claim in this case beyond having it litigated.”

But this statement made to the grand jury was inaccurate. In truth, the President had again asserted executive privilege only a few days earlier. And a few days after his grand jury testimony, the President again asserted executive privilege to prevent the testimony of Bruce Lindsey. These executive privilege cases continue to this day. Indeed, one case is now pending in the D.C. Circuit.

When the President and the administration assert privileges in a context involving the President’s personal issues, when the President pretends publicly that he knows nothing about the executive privilege assertion, when the President and the administration rebuff our office’s efforts to expedite the cases to the Supreme Court, when the President contends in the grand jury that he never really wanted to assert executive privilege beyond having it litigated, despite the fact that he had asserted it 6 days earlier and would do so again 11 days afterwards, there is substantial and credible evidence that the President has misused the privileges available to his high office. And the misuse delayed and impeded the Federal grand jury’s investigation.

The fifth tactic was diversion and deflection. The President made false statements to his aides and associates about the nature of the relationship, as we have seen, with knowledge that they could testify to that effect to the grand jury sitting here in Washington. The President did not simply say to his associates that the allegations were false, or that the issue was a private matter that he did not want to discuss. Instead, the President concocted alternative scenarios that were then repeated to the Federal grand jury.

The final two tactics were related: to attack the grand jury investigation, including the Justice Department prosecutors who serve in my office, to declare war, in the words of one Presidential advisor and ally; and to shape public opinion about the proper resolution of the entire matter. It is best that I leave it to someone outside our office to elaborate on the war against the office, but no one really disputes that these tactics were employed and continue to be employed to this very day.

This strategy proceeded for nearly 7 months. It changed course in August after Monica Lewinsky reached an immunity agreement with our office, and the grand jury, after deliberation, issued a subpoena to the President.

The President testified before the grand jury on August 17. Beforehand, many in Congress and in the public advised that the President should tell the truth. They cautioned that the President should not lie before the grand jury. Senator Hatch, for example, stated that, “So help me, if he lies before the grand jury, that will be grounds for impeachment.” Senator Moynihan simply stated that perjury before the grand jury was, in his view, an impeachable offense.

The evidence suggests that the President did not heed this senatorial advice. Although admitting to an ambiguously defined inappropriate relationship, the President denied that he had lied under oath at his civil deposition. He also denied any conduct that would establish that he had lied under oath at that deposition. The Presi-

dent thus denied certain conduct with Ms. Lewinsky and devised a variety of tortured and false definitions.

The President's answers have not been well received. Congressman Schumer, the Senator-elect who won, stated that "it is clear that the President lied when he testified before the grand jury." Congressman Meehan stated that the President engaged in a "dangerous game of verbal Twister." Indeed, the President made false statements to the grand jury, and then that same evening spoke to the Nation and criticized all attempts to show that he had done so as invasive and irrelevant. The President's approach appeared to contravene the oath that he took at the start of the grand jury proceedings. It also disregarded the admonitions of those Members of Congress who warned that lying to a grand jury would not be tolerated. It also discounted Judge Susan Webber Wright's many orders in which she had ruled that this kind of evidence was relevant in the *Jones* case.

And thus ended the over 8-month journey that had begun on December 5, 1997, when Monica Lewinsky's name appeared on the witness list. The evidence suggests that the 8 months included false statements under oath, false statements to the American people, false statements to the President's Cabinet and his aides, witness tampering, obstruction of justice, and the use of Presidential authority and power in an effort to conceal the truth of the relationship and to delay the investigation.

Given the serious nature of perjury and obstruction of justice regardless of its setting, it is obvious that the actions of the President and Ms. Lewinsky to conceal the truth warranted criminal investigation. Let me explain how the investigation came to be handled by our office rather than by the Department of Justice, or by some other independent counsel. That explanation is straightforward.

On January 8, an attorney in our office was informed that a witness, who was Linda Tripp, who had been a witness in prior investigations in our office, had information that she wanted to provide. A message was conveyed back that she should provide her information directly. Ms. Tripp called our office on January 12. In that conversation and later, she provided us a substantial amount of information.

Let me pause here and emphasize that our office, like most law enforcement agencies, has received innumerable tips about a wide variety of matters over the past 4 years, from Swiss bank accounts to drug smuggling. You name it, we have heard it. In each case, we must make an initial assessment, whether it is a serious tip or a crank call, as well as an assessment of jurisdictional issues.

We handled the information from Ms. Tripp in this same manner. When we confirmed that the information appeared credible, we reached out to the Department of Justice, as we have done regularly during my tenure as Independent Counsel. We contacted Deputy Attorney General Eric Holder within 48 hours after Ms. Tripp provided us information, and we found him appropriately at a basketball game in the evening hours of that day. The next day we fully informed the Deputy Attorney General about Ms. Tripp's information, about Ms. Tripp's tapes and the questions concerning their legality under State law. About the consensual FBI recording of Ms. Tripp and Ms. Lewinsky. About the indications that Vernon

Jordan was providing employment assistance to a witness who had the potential to harm the President, a fact pattern that we had seen in the Webster Hubbell investigation, which I shall describe presently.

We discussed jurisdiction. We noted that it is in everyone's interest to avoid time-consuming jurisdictional challenges. We stated that the Lewinsky investigation could be considered outside our jurisdiction, as then constituted. We stressed that someone needed to work the case: The Justice Department or an independent counsel.

Later that evening, the Deputy Attorney General telephoned and reported that the Attorney General had tentatively decided to assign the matter to us. Before her decision was final, we reviewed the evidence in detail with two experienced career prosecutors in the Justice Department. One senior Justice Department prosecutor listened to portions of the FBI tape, the consensual recording. The Attorney General made her final decision on Friday, January 16. That day, through a senior career prosecutor, the Attorney General asked the three-judge Special Division to expand our office's jurisdiction. The Special Division granted the request that day.

In short, our entry into this investigation was a standard, albeit an expedited, procedure.

Seven months later, after conducting the factual investigation, and after the President's grand jury testimony, the question we faced was what to do with the evidence. The chairman referred to Section 595(c) of the independent counsel statute, which requires an independent counsel, investigating possible crimes, to provide to the House of Representatives, in the words of the statute, substantial and credible information that may constitute grounds for an impeachment.

This reporting provision suggests a statutory preference that possible criminal wrongdoing by a President be addressed in the first instance by the House of Representatives. It also requires an analysis of the law of impeachment. You have had hearings on that subject, but let me say that as we understood the text of the Constitution, its history and relevant precedents, it was clear to us that obstruction of justice, in its various forms, including perjury, may constitute grounds for an impeachment, the language of the statute.

Even apart from any abuses of presidential authority and power, the evidence of perjury and obstruction of justice required us to refer the information to the House. Perjury and obstruction of justice are, of course, serious crimes. In 1790, the first Congress, sitting in New York, passed a criminal law that banned perjury. A violator was subject to 3 years' imprisonment. Today, Federal criminal law makes perjury a felony punishable by 5 years' imprisonment.

In cases involving public officials, courts treat false statements with special condemnation. United States District Judge Royce Lamberth, here in Washington, recently sentenced Ronald Blackley, the former chief of staff to the former Secretary of Agriculture, to 37 months imprisonment for false statements.

The District Court, Judge Lamberth, stated, in his words, the Court "has a duty to send a message to other high level government officials that there is a severe penalty to be paid for providing

false information under oath.” Although perjury and obstruction of justice are serious Federal crimes, some have suggested that they are not high crimes or misdemeanors when the underlying events concern the President’s private actions.

Under this theory, a President’s obstruction and perjury must involve concealment of official actions. This interpretation does not appear in the Constitution itself. Moreover, the Constitution lists bribery as a high crime or misdemeanor and if a President involved in a civil suit bribed the judge to rule in his favor, or bribed a witness to provide favorable testimony, there could be no textual question that the President had committed a high crime or misdemeanor under the plain language of Article II, even though the underlying events would not have involved his official duties.

In addition, virtually everyone agrees that serious crimes, such as murder and rape, would be impeachable even though they do not involve official duties. Justice Story, in the last century, stated in his famous commentaries that there is not a syllable in the Constitution which confines impeachment to official acts. With all respect, an absolute and inflexible requirement of a connection to official duties appears, fairly viewed, to be an incorrect interpretation of the Constitution.

History and practice support the conclusion that perjury in particular is a high crime and misdemeanor. Perjury has been the basis, as the committee knows, for the removal of several judges. As far as we know, no one has questioned whether perjury was a high crime or misdemeanor in those cases. In addition, as several of the scholars who appeared before you testified and to whom the chairman referred, perjury seems to have been recognized as a high crime or misdemeanor at the time of the founding of our republic. And the House Manager’s report in the impeachment of Judge Walter Nixon, for perjury, stated, “It is difficult to imagine an act more subversive to the legal process than lying from the witness stand.”

Finally, I note that the Federal Sentencing Guidelines include bribery and perjury in the same guideline, reflecting the common sense conclusion that bribery and perjury are equivalent means of interfering with the governmental process. For these reasons, we concluded that perjury and obstruction of justice, like bribery, may constitute grounds for an impeachment.

Having said that, let me again emphasize my role here. We had a judgment to make, but whether the President’s actions are, in fact, grounds for an impeachment or some other sanction is a decision in the sole discretion of the Congress.

A final point warrants mention in this respect. Criminal prosecution and punishment are not the same as or a substitute for congressionally imposed sanctions. As the Supreme Court stated in a 1993 case, “the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses, the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings. The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgment.”

Our task over the past several years has involved far more than simply the Lewinsky matter. The pattern of obstruction of justice,

false statements and misuse of executive authority in the Lewinsky investigation did not occur in a vacuum. In August 1994—

Ms. JACKSON LEE. Mr. Chairman, I seek a ruling of the Chair. Mr. Chairman, I seek a ruling of the Chair.

Mr. HYDE. Well, all right. I take it the gentlelady has a point of order?

Ms. JACKSON LEE. Yes, I do, Mr. Chairman.

Mr. HYDE. State your point.

Ms. JACKSON LEE. Mr. Chairman, I respectfully raise this point of order with the understanding that we have not received nor are we receiving any referral on the issues dealing with Madison Guaranty, Whitewater, Travelgate or Filegate and, in fact, as I understand, there is an announcement today that the findings of guilt against the President on the issues of Travelgate or Filegate do not exist, referred to in pages 46 and 47 of the statement of Mr. Starr.

I therefore ask, Mr. Chairman, whether Mr. Starr's remarks, as he begins them at this point, are germane, and secondly, whether or not the President is being denied his Fifth Amendment rights by lack of notice and a denial of liberty by not having been noticed of any presentations being made on Whitewater, Madison Guaranty, Filegate and Travelgate. I believe Mr. Starr's remarks are now out of order and I believe that there should be a ruling that his remarks are not germane and, that if he proceeds he will be denying the President and any other parties the constitutional right of due process and the Fifth Amendment.

And, Mr. Chairman, as you well recognized, I raised the question when we began some 2 or 3 months ago, as to whether or not this committee would abide by the constitutional provision of the Fifth Amendment. I offered an amendment to that point. I was told by the Chair at that time that under the Rules of the House we would be guided by the Fifth Amendment, and I believe that the due process rights of the President and other parties are being denied with the representations that Mr. Starr is about to make. I would ask the Chair for his ruling.

Mr. HYDE. Well, the Chair overrules the gentlelady's point of order and the witness will continue.

Mr. STARR. Thank you.

Ms. JACKSON LEE. I thank the Chair.

Mr. STARR. Thank you, Mr. Chairman.

I had said that it was in August of 1994 that I took over the Madison Guaranty investigation from Robert Fiske. Over the ensuing years, I have essentially become Independent Counsel for five distinct investigations: For Madison Guaranty and Whitewater, for Foster-related matters, for the Travel Office, for the FBI files matter and for the Lewinsky investigation, as well as for a variety of obstruction and related matters that arose out of those five major investigations.

A very brief overview of those investigations may assist the committee in its assessment of the President's conduct. First, some statistics. The chairman noted that the investigation has resulted in the conviction of 14 individuals, including the former Associate Attorney General of the United States, Webster Hubbell, the then sitting Governor of Arkansas, Jim Guy Tucker, and the Clintons' two business partners, Jim and Susan McDougal.

We are proud not only of the cases that we have won but of our decisions not to indict. To take one well-known example, the Senate Whitewater Committee sent our office public criminal referrals on several individuals. The committee stated in its June 21, 1996, public letter that the testimony of Susan Thomases was particularly troubling and suggests a possible violation of law. But this office did not seek charges against her.

Apart from indictments and convictions, this office has also faced an extraordinary number of legal disputes on issues of privilege, on jurisdiction, substantive criminal law and the like. By my count at least 17 of our cases have been decided by the Federal Courts of Appeals, and we have been fortunate in prevailing in all 17. One privilege case arising in our Travel Office investigation went to the D.C. Circuit, where we prevailed by a 2-to-1 decision, and then to the Supreme Court, where we lost by a 6-to-3 decision.

We had to litigate in the courts as our investigation ran into roadblocks and hurdles that slowed us down. It is true that the administration produced a great amount of information, but unlike the prosecutors in the investigations involving Presidents Carter and Reagan, we have been forced to go to court time and time again to seek information from the executive branch, and to fight a multitude of privilege claims asserted by the administration, every single one of which we have won.

In sum, the office where I serve has achieved a superb record in courts of law of significant and hard fought convictions, of fair and wise decisions not to charge, of thorough and accurate reports on the Vincent Foster death and the Monica Lewinsky matters, of legal victories in various courts. We go to court and not on the talk-show circuit, and our record shows that there is a bright line between law and politics, between courts and polls. It leaves the polls to the politicians and the spin doctors. We are officers of the court who live in the world of law. We have presented our cases in court and with very rare exception we have won.

The center of all of this, the core of our Arkansas-based investigation, was Madison Guaranty Savings and Loan. Madison was a federally insured savings and loan in Little Rock, Arkansas, run by Jim and Susan McDougal. Like many savings and loans in the 1980s, Madison was fraudulently operated. Mrs. Clinton and other lawyers at the Rose Law Firm in Little Rock performed legal work for Madison in the 1980s. Madison first received attention in March 1992, when a New York Times report raised several issues about the relationships between the Clintons and the McDougals in connection with Madison Guaranty.

Federal bank examiners examined Madison in 1992 and 1993, and the regulators sent criminal referrals to the Justice Department, and the Justice Department then launched a criminal investigation of Madison Guaranty in November 1993. In part, because of the relationship of the Clintons to the McDougals, Attorney General Reno appointed Bob Fiske in January 1994. I was appointed Independent Counsel in August 1994 to continue the investigation.

Madison exemplified the troubled practices of savings and loans in the 1980s. The failure of the institution ultimately cost Federal taxpayers approximately \$65 million. Congresswoman Waters put it this way in a 1995 hearing: "By any standard, Madison Guaranty

was a disaster. It gambled with investments, cooked the books and ultimately bilked the taxpayers of the United States." Madison, she went on, "is a metaphor for the S&L crisis."

The McDougals' operation of Madison raised serious questions whether bank funds had been used illegally to assist business and political figures in Arkansas, such as Jim Guy Tucker, the Governor to be, and the then Governor, Governor Clinton. As to the Clintons, the question arose primarily because they were partners with the McDougals in the Whitewater Development Company. The Whitewater Corporation initially controlled and developed approximately 230 acres of property on the White River in northern Arkansas. Given Jim McDougal's role at the center of both institutions, and given Whitewater's constant financial difficulties, there were two important questions: Were Madison funds diverted to benefit Whitewater? If so, were the Clintons either involved in or knowledgeable of that diversion of funds? Those questions were not idle speculation.

In early 1994, a Little Rock judge and businessman, David Hale, pled guilty to certain unrelated Federal crimes. As part of his plea, David Hale told Mr. Fiske's team that he had received money as a result of a loan from Madison in 1986 and that his company loaned it to others as part of a scheme to help some members of the Arkansas political establishment.

One loan of \$300,000 went to Susan McDougal's make-believe company, which she called Master Marketing. Based on our investigation, we now know that some \$50,000 of the proceeds of that loan went to benefit the Whitewater Corporation. David Hale stated that he had discussed the Susan McDougal loan with then Governor Clinton, including at a meeting in 1986 with Jim McDougal and the Governor.

In August 1994, when I first arrived in Little Rock and, building on Mr. Fiske's work, we devised a plan. First, based on the testimony of David Hale and others, as well as documentary evidence, we would take steps, if appropriate, if the evidence warranted, to seek an indictment of Jim and Susan McDougal and others involved in what clearly appeared to be criminal transactions. If a Little Rock jury convicted the McDougals or others, we would then obtain their testimony and determine whether they had other relevant information, including, of course, whether the McDougals possessed information that would either exonerate or incriminate the Clintons as to Madison and Whitewater matters. This approach was the time honored and professional way to conduct an investigation.

We garnered a number of guilty pleas in my first year. One was from Webster Hubbell, who had worked at the Rose Law Firm and was knowledgeable about its work with Madison, including that of Mrs. Clinton as a lawyer at the Rose Firm. In addition, Robert Palmer, a real estate appraiser, pled guilty to fraudulently doctoring Madison documents to deceive Federal bank examiners. Three other associates of McDougal pled guilty and agreed to cooperate.

In August 1995, a year after I was appointed by the Special Division, a Federal grand jury in Little Rock indicted Jim and Susan McDougal and the then sitting Governor of Arkansas, Jim Guy Tucker. The case went to trial in March of 1996, amid charges by

all three defendants and their allies that the case was a political witch-hunt. Some predicted that an Arkansas jury would never convict the sitting Governor. These expectations were heightened when Governor—excuse me, when President Clinton was subpoenaed as a defense witness in Governor Tucker's trial.

The President testified for the defense from the Map Room of the White House. During his sworn testimony, the President testified, as a defense witness, that he did not know about the Susan McDougal loan, nor had he ever been in a meeting with Hale and McDougal about the loan. He also testified that he had never received a loan from Madison. This was important testimony. Its truth or falsity went to the core issues of our investigation.

On May 28, 1996, all three defendants were convicted; Jim McDougal of 18 felonies, Susan McDougal of 4 felonies and Governor Tucker of 2 felonies. Governor Tucker announced his resignation that day.

After his conviction, Jim McDougal began cooperating with our investigation. We spent many hours with him, gaining additional insights and facts. He informed our career investigators and prosecutors that David Hale was accurate. According to Jim McDougal, President Clinton had testified falsely at the McDougal-Tucker trial. Jim McDougal testified that he had been at a meeting with David Hale and Governor Clinton about the Master Marketing loan, and Jim McDougal testified that Governor Clinton had received a loan from Madison. Jim McDougal said on one of the first sessions with our office, following his conviction, that the President's trial testimony was, in his words, at variance with the truth. In late 1997—

Ms. JACKSON LEE. Mr. Chairman, I have a point of order.

Mr. HYDE. The gentlelady, I would appreciate it if she wouldn't interrupt, but go ahead and state your point.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. And I appreciate the need for us to proceed, and to proceed fairly. That's all I am asking for.

Mr. HYDE. I am sure you do.

Ms. JACKSON LEE. Mr. Chairman, I have stated earlier my objections to the direction of the testimony. Frankly, I raise again the question of germaneness with respect to representations related to Whitewater, Madison Guaranty and due process, Mr. Chairman. I think this testimony is inappropriate. There is not an attempt to cover up, but I do not have before me a referral from Mr. Starr or any of his deputies on the question of Whitewater, Filegate or Travelgate. Mr. Chairman, this testimony is not germane and it is a denial of due process.

Mr. HYDE. I thank the gentlelady. This committee hearing is being conducted pursuant to notice, pursuant to House Resolution 581. That resolution directs the committee to, and I quote, "investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America." That is the wide open range that we have given ourselves in this resolution in contradistinction to the Democratic resolution which wanted a narrow inquiry. That very issue was debated and voted on.

So the gentleman's, the witness', testimony is perfectly germane and consonant with House Resolution 581 and, therefore, the gentlelady's point of order is overruled and the witness will continue.

Ms. JACKSON LEE. Mr. Chairman, I would like to appeal the ruling of the Chair.

Mr. BRYANT. Mr. Chairman.

Mr. HYDE. Would you consult with your ranking minority member and see if—

Mr. BRYANT. Mr. Chairman, I would like a vote on that ruling.

Ms. JACKSON LEE. I would make my objection.

Mr. BRYANT. I would ask for a vote on that.

Mr. HYDE. Please, we are trying to move along, and I appreciate the—

Ms. JACKSON LEE. In the sense of comity, Mr. Chairman, I withdraw my desire for a vote.

Mr. BRYANT. I just asked for a vote, that's all.

Mr. HYDE. I am going to deny my friend Mr. Bryant's request, and then you and I can struggle over the noon hour. But I would like to move ahead. Thank you.

Ms. JACKSON LEE. Mr. Chairman, is my objection registered?

Mr. HYDE. Indeed it is registered, twice.

Ms. JACKSON LEE. Thank you.

Mr. HYDE. We will register it every half-hour, if you would like.

Ms. JACKSON LEE. Thank you.

Mr. HYDE. The witness will continue, please.

Mr. STARR. Thank you, Mr. Chairman.

In late 1997, we, in our office, considered whether this evidence that I have just described, justified a referral to Congress. We drafted a report. But we concluded that it would be inconsistent with the statutory standard because of the difficulty of establishing the truth with a sufficient degree of confidence. We also weighed a prudential factor in reaching that decision. There were still two outstanding witnesses who might later corroborate or contradict the McDougal and Hale accounts: Jim Guy Tucker and Susan McDougal.

In 1998, we were finally able to obtain information from Governor Tucker. It had taken 4 long years to hear from the Governor. He pled guilty in a tax conspiracy case, and he ultimately testified before the Little Rock grand jury in March and April of this year, but he had little knowledge of the loan to Susan McDougal's fictitious company and the President's possible involvement in it. He did shed light on the overall transactions involving Castle Grande and Madison. Importantly, as to one subject, Governor Tucker exonerated the President regarding long-standing questions whether the President and Governor Tucker had a conversation about the Madison referrals in the White House in October 1993. The Governor exonerated the President.

The remaining witness who perhaps could shed light on the issue was Susan McDougal, and therein lies a story that has caused literally years of delay and added expense to the investigation.

Because the proceeds from the fraudulent loan that Susan McDougal received had benefitted the Clintons, the proceeds were used to pay off obligations of the Whitewater Development Com-

pany for which the Clintons were potentially personally liable, Susan McDougal was subpoenaed to testify before the grand jury in Little Rock in August 1996. She was asked several questions going to the very heart of the investigation, including these: Did you ever discuss your loan from David Hale with William Jefferson Clinton? To your knowledge, did William Jefferson Clinton testify truthfully during the course of your trial?

Susan McDougal refused to answer any questions. District Judge Susan Webber Wright, in Little Rock, then held her in civil contempt, a decision later upheld unanimously by the United States Court of Appeals in St. Louis.

The month of September 1996 was thus a crucial time for our office in its attempt to obtain Susan McDougal's lawful testimony.

On September 23, 1996, just two weeks after Ms. McDougal had been found in contempt by Judge Wright, President Clinton was interviewed on PBS. The President said, "There is a lot of evidence to support," his words, various charges that Susan McDougal had made against our office, but the President cited no evidence.

The President's comments can reasonably be described as supportive of Ms. McDougal's decision to disobey the Court order. So far as we are aware, no sitting President ever has publicly indicated his agreement with a convicted felon's stated reason for refusing to obey a Federal court order to testify. Essentially, the President of the United States, the Chief Executive, sided with a convicted felon against the United States as represented by United States District Court Judge, now Chief Judge, Susan Webber Wright, the United States Court of Appeals for the Eighth Circuit, and our office.

The President was also asked in the interview whether he would consider pardoning Ms. McDougal. The President refused to rule out a pardon.

The President's answers to these questions were roundly criticized. A New York Times editorial captured the point well, stating that the President's remarks undercut a legal process that is going forward in an orderly way.

A separate area of our original investigation concerned the Rose Law Firm's work in 1985 and 1986 for Madison. It appeared that Rose may have assisted Madison Guaranty in performing legal work concerning a piece of property known alternatively as IDC, or Castle Grande, which involved McDougal, Madison Guaranty and fraudulent transactions. The complicated real estate deal known as Castle Grande was structured to avoid state banking regulatory requirements and involved violations of Federal criminal law.

Grand jury subpoenas were issued in 1994 and 1995 to the Rose Law Firm and to the President and to Mrs. Clinton, seeking all documents relating to Madison and Castle Grande. We ultimately learned that Mrs. Clinton had performed some legal work related to Madison's Castle Grande/IDC transactions, but the whole issue remained partially enshrouded in mystery as our office and the Senate Whitewater Committee investigated the issue in 1995.

The problem was that some of the best evidence regarding Mrs. Clinton's work, her Rose Law Firm billing records and her time sheets for 1985 and 1986 at the Rose Firm, could not be found. The missing records raised suspicions by late 1995 and became a public

issue. Webster Hubbell and Vincent Foster, Jr., had been responsible, during the 1992 campaign, for gathering information about Mrs. Clinton's work for Madison Guaranty, yet the billing records could not be found. The Rose Firm's work for Madison Guaranty could not be fully pieced together. The Rose Firm no longer had the records.

On January 5, 1996, the records of Mrs. Clinton's activities, her legal work for Madison, were finally produced under unusual circumstances. The records detail Mrs. Clinton's work on a variety of Madison issues, including the preparation of an option agreement that Madison Guaranty used to deceive Federal bank examiners as part of the Castle Grande deal. After a thorough investigation, we have found no explanation how the billing records got where they were or why they were not discovered and produced earlier. It remains a mystery to this day.

Then in the summer of 1997, a second set of these billing records was found in the attic of the late Vincent Foster, Jr.'s house in Little Rock. The time sheets for Rose's work in 1985 and 1986 for Madison Guaranty have never been found. We should note that Webster Hubbell may have additional information pertaining to Castle Grande, whether exculpatory or inculpatory, that we have been unable to obtain. Mr. Hubbell was at the Rose Law Firm at the relevant time in 1985 and 1986. He gathered information about the Madison Guaranty issue in 1992 and his father-in-law was involved in the Castle Grande deal.

Two other important facts suggest that Mr. Hubbell may have additional information. First, on March 13, 1994, after a meeting at the White House where it had been discussed that Mr. Hubbell would resign from the Justice Department, then Chief of Staff Mack McLarty told Mrs. Clinton that, in his words, "we are going to be supportive of Webb."

As this criminal investigation was beginning in 1994, under Bob Fiske and then later my office, Mr. Hubbell received payments totaling nearly \$550,000 from several companies and individuals. Many were campaign contributors. These individuals had been contacted through the White House Chief of Staff, Mr. McLarty, and others. In June, 1994, during a week in which he made several visits to the White House, Indonesian businessman James Riady met with Webster Hubbell and then wired him \$100,000. One of the individuals who arranged for Mr. Hubbell to receive a consulting contract was Vernon Jordan. The company that Mr. Jordan convinced to hire, to engage Mr. Hubbell, was MacAndrews & Forbes, the parent company of Revlon. This is the same company that hired Monica Lewinsky upon Mr. Jordan's recommendation.

As he was destined later to do with Monica Lewinsky, Mr. Jordan personally informed the President about his, Mr. Jordan's, assistance to Mr. Hubbell.

Most of the \$550,000 was given to Mr. Hubbell for little or no work. This rush of generosity obviously gives rise to an inference that the money was essentially a gift. And if it was a gift, why was it given? This money was given despite the fact that Mr. Hubbell was under criminal investigation for fraudulent billing and was a key witness in the Madison Guaranty investigation.

Second, as is known to the public, on certain prison tapes while Mr. Hubbell was in prison, he said to his wife, "I won't raise those allegations that might open it up on Hillary."

On another tape, Mr. Hubbell said to White House employee Marsha Scott that he might have to roll over one more time.

Mr. Hubbell's statements, when combined with the amount of money he received and the information he was in a position to know, raise very troubling questions. Mr. Hubbell is currently under Federal indictment. There is a presumption of innocence and it would be inappropriate to say more about that at this time.

Let me add a few brief words about the Travel Office matter. This phase of our work arose out of investigations by others of the 1993 firings of Billy Dale and six career co-workers. As has already been indicated, in comments from a member, we do not anticipate that any evidence gathered in that investigation will be relevant to the committee's current task. The President was not involved in our Travel Office investigation. As to the status of that investigation, it was on hold for quite a while, in part because of litigation. The investigation is not terminated but we expect to announce any actions and decisions soon.

As to the FBI files matter, there are outstanding issues that we are attempting to resolve with respect to one individual, but I can address two issues of relevance to the committee's work. First, our investigation, which has been thorough, found no evidence that anyone higher than Mr. Livingstone or Mr. Marceca was in any way involved in ordering the FBI files from the FBI. Second, we have found no evidence that information contained in the files of former officials was actually used for an improper purpose.

Let me now mention a few words about our personnel, our process and our reflections. The character and the conduct of the men and women of our office, largely career professionals who take their jobs and their oaths very seriously, have been badly distorted. Perhaps that is inevitable, given the nature of the issues involved, given the fact that the President of the United States is the subject of a criminal investigation, but it is regrettable and so let me offer some truth about our office.

I will start with our personnel. During the Lewinsky investigation, my staff has included skilled and experienced prosecutors from around the country. They have brought an enormous amount of experience and expertise to the office. My colleagues during this past year have included a former United States Attorney—several members of this committee are former United States Attorneys—the Chief of the Public Corruption Unit of the United States Attorney's Office in Los Angeles; the Chief of the Public Corruption Unit of the United States Attorney's Office in Miami; the Chief of the Bank Fraud Unit of the United States Attorney's Office in San Antonio; prosecutors with lengthy experience in the Public Integrity Section of the Department of Justice; seasoned Federal prosecutors from 10 different States and the District of Columbia; and veteran state prosecutors from Maryland and Oregon.

The office has also benefitted from the assistance of Sam Dash, chief counsel of the Senate Watergate Committee, who has offered great wisdom during my tenure. Professor Ronald Rotunda, con-

stitutional law scholar from the University of Illinois, has likewise provided advice on a variety of issues.

The office has received assistance from professors at the University of Michigan, the University of Illinois, Notre Dame and George Washington. Moreover, former law clerks for six different Supreme Court Justices have served on my staff during the past year.

During the Lewinsky investigation, the office also relied on many talented investigators with extensive service in the FBI and in law enforcement agencies, and the FBI laboratory yet again provided superb assistance to us, as it has throughout the Madison/White-water investigation, with the strong support of Judge Freeh.

In addition, let me express my appreciation, and it is great, for the grand jurors who devoted much time and energy to examining the witnesses and considering the evidence. Those 23 citizens of the District of Columbia have performed an invaluable service, and I publicly thank them. This is the rare case where grand jury transcripts become publicly scrutinized, and as the committee members now know, these grand jurors were active, they were knowledgeable, they were fair and they were completely dedicated to uncovering and understanding the truth.

In all of our investigations, difficult decisions have been taken through our office's deliberative process, and that's what we call it. That process calls upon each attorney, drawing upon his or her background and experience, to offer views on issues in question. This deliberative process is laborious, sometimes tedious, but it is an attempt to ensure that our office makes the best decisions it can.

I have drawn upon a vast array of experienced prosecutors and investigators because I was sensitive to and am sensitive to the fact that an independent counsel exists outside the Justice Department and is an unusual entity within our constitutional system.

Throughout this investigation, we have made every effort to follow Department of Justice policy and practice and to utilize time honored law enforcement and investigative techniques. Of course, with their vast experience in the department and the FBI, our prosecutors and investigators embody such policy and practice. Nonetheless, it was often the case during an all-attorneys meeting that we would repair to the United States Attorney's Manual to be sure that we had it right.

It is true, and Mr. Conyers' comments raised the issue, that some law enforcement procedures may not be entirely comfortable for some witnesses, but the procedures have been refined over decades of practice in which society's right to detect and prosecute crime has been balanced against individual liberty and a balance struck. It was not our place to reinvent the investigative wheel. Nor is it our place to discard law enforcement practices that are used every day by prosecutors and by police throughout the country.

With that, let me be the first to say that the Lewinsky investigation in particular presented some of the most challenging issues that any lawyer or investigator could face. We had to make numerous decisions and to make them very quickly. Those included factual judgments: Is witness X or witness Y telling us the whole truth? As one of my prosecutors has frequently said, we can deal with the truth but we cannot deal with lies. Only give us the truth.

And we have to make that assessment. Strategic choices: Do we provide immunity to Ms. Lewinsky in order to obtain her testimony? Is it appropriate to subpoena the President? Legal decisions: Do we accept the assertion of executive privilege for Bruce Lindsey or do we go to district court to challenge it? What about the Secret Service privilege, and historic constitutional judgments? What is the meaning of Section 595(c) of this statute, the independent counsel statute, and how do we prepare a referral that satisfies its requirements? It had never been done before.

Major decisions during the Lewinsky investigation have not been easy, and given the hurricane-force winds swirling about us we were well aware that no matter what decision we made, criticism would come from somewhere. As Attorney General Reno has said, in high profile cases like these, not referring to this case but in high profile cases, you are, in her words, damned if you do and damned if you don't. So you had better just do what you think is the right and proper thing.

We also attempted to be thorough, but we did not invent that approach, being thorough with the Lewinsky case. To take just one previous example, in investigating matters relating to the death of Vincent Foster, Jr., we were painstaking in examining evidence, in questioning witnesses and in calling upon experts in homicide and suicide. We were criticized throughout that investigation for being too thorough, for taking too long, but time has proved the correctness of that approach. After an extensive investigation, the office produced a report that addressed the many questions that confronted the difficult issues. It laid out new evidence and it reached a definitive conclusion.

Over time, the controversy over the Foster tragedy has dissipated, because we insisted on being uncompromisingly thorough, both in our investigation and in our report. After the Attorney General and the Court of Appeals assigned us the Lewinsky investigation, the office again received criticism for being too thorough. But the Lewinsky investigation could not properly be conducted in a slapdash manner. It was our duty to be meticulous, to be careful. We were. And in the process, we uncovered substantial and credible evidence of serious legal wrongdoing by the President.

Some then suggested, and it has been suggested this morning, that the report we submitted to Congress was too thorough. But bear in mind, we submitted the referral, as we were required to do, to the House of Representatives and not to the public. And we must respectfully dispute the suggestion that a report to the House suggesting possible impeachable offenses committed by the President of the United States should tell something less than the full story. The facts, the story, are critical. They affect credibility. They are necessary to avoid a distorted picture, and they are ultimately the basis for a just conclusion.

As a result, just as the jurors found the details of specific land deals critically important in our trial of Governor Jim Guy Tucker and of the McDougals, just as the Supreme Court of the United States includes the details of grisly murders in its death penalty cases, so, too, the details of the President's relationship with Ms. Lewinsky became relevant. Indeed, they became critical in deter-

mining whether and the extent to which the President made false statements under oath and otherwise obstructed justice in

*Jones v. Clinton*, in both that case and then again in his grand jury testimony. And as you know, by an overwhelming bipartisan vote, the House immediately disclosed our referral to the public. But I want to be clear, as a matter of fairness, that the public disclosure or nondisclosure of the referral and the backup materials was a decision that our office did not make and lawfully could not make. We had no way of knowing in advance of submitting the referral, and we did not know, whether the House would publicly release both the report and the backup materials; would release portions of one or both; would release redacted versions of the report and backup documents; would prepare and release a summary akin to Mr. Schippers' oral presentation; or would simply keep the referral and backup materials under seal just as Special Prosecutor Leon Jaworski's submission in 1974 remained under seal.

As a result, we respectfully but we firmly reject the notion that our office was trying to inflame the public. We are professionals and we were trying to get the relevant facts, the full story, to the House of Representatives. That was our task and that is what we did.

In fact, the referral has served a good purpose. There has been virtually no dispute about a good many of the factual conclusions in the report. In the wake of the referral, for example, few have ventured that the President told the truth, the whole truth and nothing but the truth in his civil case and before the grand jury. A key reason, we submit, is that we insisted, as we have in our other investigations, that we be exhaustive in the investigation and that we document the facts and conclusions in our report.

I want to be absolutely clear on one point, however. Any suggestion that the men and women of our office, with whom I am privileged to serve, enjoyed or relished this investigation is wrong. It is nonsense. In at least three ways, the Lewinsky investigation caused all of us considerable dismay and continues to do so. First, none of us has any interest whatsoever in investigating the factual details underlying the allegations of perjury and obstruction of justice in this case. My staff and I agree with the sentiments expressed by the chairman in the November 9 hearing when he said, "I would like to forget all of this. I mean, who needs it?" But the Constitution and the criminal law do not have exceptions for unseemly or unpleasant or difficult cases. The Attorney General of the United States and the Court of Appeals Special Division assigned us a duty to pursue the facts, and we did so.

Second, this investigation has proved difficult for us because it is centered on legal wrongdoing by the President of the United States. The Presidency is an office that we, like all Americans, revere and respect. No prosecutor is comfortable when he or she reports wrongdoing by the President. All of us want to believe that our President has at all times acted with integrity and certainly that he has not violated the criminal law.

Everyone in my office therefore envies the position years ago of Paul Curran, who was the distinguished counsel appointed by Attorney General Griffin Bell to investigate certain financial transactions involving President Carter. Mr. Curran, by his account, re-

ceived complete cooperation from President Carter, found no wrongdoing by the President and promptly returned to private life. Mr. Chairman, I would like to do the same.

Third, this investigation was unpleasant because our office knew that some Americans, for a variety of reasons, would be opposed to our work. But we would not, could not, allow ourselves to be deterred from doing our work. As I have said, our office was assigned a specific duty by the Attorney General and the Special Division to gather the facts and then, if appropriate, to make decisions and to report the facts as quickly as we possibly could. In the end, we tried to adhere to the principle Congressman Graham discussed on October 5. Thirty years from now, not 30 days from now, we want to be able to say that we did the right thing.

At the end of the day I and no one else was responsible for our key decisions, and my background warrants a very brief note, if you will indulge me. The chairman was kind enough to indicate as much.

I began my legal career in 1973 as a law clerk, first for a judge, Judge David Dyer, on the Fifth Circuit Court of Appeals, who passed away earlier this year; and then for 2 years for Chief Justice Burger. Following clerkships, I was in private law practice in Los Angeles and Washington. After William French Smith took office as Attorney General in January 1981, I served as counselor to the Attorney General from 1981 to 1983. In that capacity, I experienced firsthand the varied and difficult judgment calls that the Attorney General faces every day, whether it was dealing with the aftermath of the attempted assassination of the President or selecting a Supreme Court nominee, in that case Justice Sandra Day O'Connor. I took away from that experience an admiration that has continued to this day for the career Justice Department lawyers and prosecutors and the law enforcement officials who toil without fanfare, and for whom the guiding principles are fairness and a respect for the law.

In 1983, President Reagan nominated me, and the Senate was kind enough to confirm me, as a judge on the United States Court of Appeals for this circuit. I became a colleague on a court with truly great judges, from J. Skelley Wright to Antonin Scalia, from Ruth Ginsburg to Robert Bork, and tackled the issues that come before the D.C. Circuit. This included issues as diverse as the constitutional right of a military serviceman to wear a yarmulke, a right I supported in vain, and the right of a newspaper to be free under the First Amendment from the threat of liability under the libel laws.

In 1989, I accepted appointment as Solicitor General of the United States and was confirmed by the Senate. The Solicitor General, as you know and have pointed out, is the lawyer who represents the United States in arguments before the Supreme Court. A distinguished predecessor before whom I was privileged to argue, Justice Thurgood Marshall, often stated that being Solicitor General was the greatest job a lawyer could have, bar none.

Justice Marshall was right. As Solicitor General, I had the privilege of arguing 25 cases before the Supreme Court on behalf the United States. The arguments covered the spectrum of our law, whether flag burning is a protected right under the Constitution,

other issues, and whether the Senate's decision to convict and remove an impeached judge is subject to judicial review.

While I was Solicitor General, my overarching goal was to run an office faithful to the law and not to political or ideological opinion, and I think the record shows that I did just that.

In 1993, I left my second tour of duty in the Justice Department and returned to private practice and teaching constitutional law. In the period before I was named Independent Counsel in August 1994, I was not, however, completely absent from public service.

In late 1993, I was asked by the Senate Ethics Committee, chaired at the time by Nevada Senator Richard Bryan, to review Senator Packwood's diaries as part of the Ethics Committee's investigation and to resolve various issues pertaining to those diaries.

Every person is, of course, deeply affected by his or her experiences, but for my part, my experience, is in the law and in the courts. I am not a man of politics, of public relations, or of polls, which I suppose is patently obvious by now. I am not experienced in political campaigns. Rather, as a product of the law and of the courts, I have come to an unyielding faith in our court system: our system of judicial review, the independence of our judges, our jury system, the integrity of the oath, and the sanctity, yes, the sanctity of the judicial process.

The phrase on the facade of the Supreme Court, "Equal Justice Under Law," the description inside the Justice Department's corridors, in the Attorney General's own chambers, "The United States wins its point when justice is done its citizens in the courts," those are more than slogans. They are not slogans. They are principles that the courts in this country apply every day. Our office saw that firsthand in the trial of Governor Jim Guy Tucker, of Jim McDougal and Susan McDougal. A juror said afterwards that they fought hard for the individuals' liberty, but they were overwhelmed by the evidence.

It is our judicial process that helps make this country distinct, and my background, my instincts, my beliefs, have instilled in me a deep respect for the legal process that is at the foundation of our Republic.

President Lincoln asked that, in his words, reverence for the laws, "reverence for the laws, be proclaimed in legislative halls and enforced in courts of justice." Mr. Chairman, members, I revere the law. I am proud of what we have accomplished. We were assigned a difficult job. We have done it to the best of our abilities. We have tried to be both fair and thorough.

I thank the Chairman, I thank the committee and the American people for their attention.

Mr. HYDE. Thank you very much, Judge Starr.

[The statement of Mr. Starr follows:]

PREPARED STATEMENT OF HON. KENNETH STARR, INDEPENDENT COUNSEL, OFFICE OF THE INDEPENDENT COUNSEL, WASHINGTON, DC

Thank you, Mr. Chairman. I welcome this opportunity to appear before the Committee and to provide information relating to the committee's inquiry into possible impeachable offenses by the President of the United States. This is my first opportunity to publicly report on certain issues related to our investigation. I look forward to doing so and assisting the Committee.

## I. INTRODUCTION

I appreciate both the seriousness of the Committee's work and the gravity of its assignment. I have reviewed the statements made by the 37 committee members in the October 5 hearing. Any citizen who watched that hearing would have been impressed by the depth and breadth of the discussion that day, and proud of the diligence with which members of this committee are approaching this extraordinarily difficult and unwelcome task. I appear before you today, therefore, fully recognizing the solemnity and importance of this process.

As you know, in January of this year, Attorney General Reno petitioned the three-Judge panel that oversees independent counsels to authorize our Office to investigate whether Monica Lewinsky or others committed Federal crimes relating to the sexual harassment lawsuit brought by Paula Jones against President Clinton. Our Office conducted a swift yet thorough investigation. We completed the primary factual investigation in under eight months, notwithstanding a number of obstacles in our path.

The law requires an independent counsel to report to the House of Representatives substantial and credible information that may constitute grounds for an impeachment. On September 9, pursuant to our statutory duty, we submitted a referral and backup documentation to the House. I am here today at your invitation in furtherance of our statutory obligation.

I recognize that the House of Representatives—not an independent counsel—has the sole power to impeach. My role here today is to discuss our referral and our investigation.

## II. LEWINSKY INVESTIGATION

## A. Overview

Let me begin with an overview. As our referral explains, the evidence suggests that the President made false statements under oath and otherwise thwarted the search for truth in the *Jones v. Clinton* case. The evidence further suggests that the President made false statements under oath to the grand jury on August 17.

That same night, the President publicly acknowledged an inappropriate relationship, but maintained that his testimony had been legally accurate. The President also declared that all inquiries into the matter should end because, he said, it was private.

Shortly after the President's August 17 speech, Senators Lieberman, Kerrey, and Moynihan stated that the President's actions were not a private matter. In our view, they were correct. Indeed, the evidence suggests that the President repeatedly tried to thwart the legal process in the *Jones* case and the grand jury investigation. That is not a private matter. The evidence further suggests that the President, in the course of these efforts, misused his authority and power as President and contravened his duty to faithfully execute the laws. That, too, is not a private matter.

The evidence suggests that the misuse of Presidential authority occurred in the following ten ways:

*First.* The evidence suggests that the President made a series of premeditated false statements under oath in his civil deposition on January 17, 1998. The President had taken an oath to tell the truth, the whole truth, and nothing but the truth. By making false statements under oath, the President, the Chief Executive of our Nation, failed to adhere to that oath and to his Presidential oath to faithfully execute the laws.

*Second.* The evidence suggests that, apart from making false statements under oath, the President engaged in a pattern of behavior during the *Jones* litigation to thwart the judicial process. The President reached an agreement with Ms. Lewinsky that each would make false statements under oath. He provided job assistance to Ms. Lewinsky at a time when the *Jones* case was proceeding and Ms. Lewinsky's truthful testimony would have been harmful. He engaged in an apparent scheme to conceal gifts that had been subpoenaed from Ms. Lewinsky. He coached a potential witness, his own secretary Betty Currie, with a false account of relevant events.

Those acts constitute a pattern of obstruction that is fundamentally inconsistent with the President's duty to faithfully execute the laws.

*Third.* The evidence suggests that the President participated in a scheme at his deposition in which his attorney, in his presence, deceived a United States District Judge in an effort to cut off questioning about Ms. Lewinsky. The President did not correct his attorney's false statement. A false statement to a federal judge in order to prevent relevant questioning is an obstruction of the judicial process.

*Fourth.* The evidence suggests that on January 23, 1998, after the criminal investigation had become public, the President made false statements to his Cabinet and

used his Cabinet as unwitting surrogates to publicly support the President's false story.

*Fifth.* The evidence suggests that the President, acting in a premeditated and calculated fashion, deceived the American people on January 26 and on other occasions when he denied a relationship with Ms. Lewinsky.

*Sixth.* The evidence suggests that the President, after the criminal investigation became public, made false statements to his aides and concocted false alibis that these government employees repeated to the grand jury. As a result, the grand jury received inaccurate information.

*Seventh.* Having promised the American people to cooperate with the investigation, the President refused six invitations to testify to the grand jury. Refusing to cooperate with a duly authorized federal criminal investigation is inconsistent with the general statutory duty imposed on all executive branch employees to cooperate with criminal investigations. It also is inconsistent with the President's duty to faithfully execute the laws.

*Eighth.* The President and his Administration asserted three different governmental privileges to conceal relevant information from the federal grand jury. The privilege assertions were legally baseless in these circumstances. They were inconsistent with the actions of Presidents Carter and Reagan in similar circumstances. And they delayed and impeded the investigation.

*Ninth.* The President made false statements under oath to the grand jury on August 17, 1998. The President again took an oath to tell the truth, the whole truth, and nothing but the truth. The evidence demonstrates that the President failed to adhere to that oath and thus to his Presidential oath to faithfully execute the laws.

*Tenth.* The evidence suggests that the President deceived the American people in his speech on August 17 by stating that his testimony had been legally accurate.

In addition to those ten points, it bears mention that well before January 1998, the President used government resources and prerogatives to pursue his relationship with Monica Lewinsky. The evidence suggests that the President used his secretary Betty Currie, a government employee, to facilitate and conceal the relationship with Monica Lewinsky. The President used White House aides and the United States Ambassador to the United Nations in his effort to find Ms. Lewinsky a job at a time when it was foreseeable—even likely—that she would be a witness in the *Jones* case. And the President used a government attorney—Bruce Lindsey—to assist his personal legal defense during the *Jones* case.

In short, the evidence suggests that the President repeatedly used the machinery of government and the powers of his Office to conceal his relationship with Monica Lewinsky from the American people, from the judicial process in the *Jones* case, and from the grand jury.

#### *B. Sexual Harassment Law*

Let me turn, then, to the legal context in which the Lewinsky issues first arose. At the outset, I want to emphasize that our referral never suggests that the relationship between the President and Ms. Lewinsky in and of itself could be a high crime or misdemeanor. Indeed, the referral never passes judgment on the President's relationship with Ms. Lewinsky. The propriety of a relationship is *not* the concern of our Office.

The referral is instead about obstruction of justice, lying under oath, tampering with witnesses, and misuse of power. The referral cannot be understood without appreciating this vital distinction.

This case raises the following initial question: Is a plaintiff in a sexual harassment lawsuit entitled to obtain truthful evidence from the defendant, and from associates of the defendant, in order to support her claim? That should be easy to answer. No citizen who finds himself accused in a sexual harassment case, or in any other kind of case, can lie under oath or otherwise obstruct justice and thereby prevent the plaintiff from discovering evidence and proving her case.

Paula Jones, a former Arkansas state employee, filed a federal sexual harassment suit against President Clinton in 1994. The President denied those allegations. We will never know whether a jury would have credited Ms. Jones's allegations. We also will never know whether the ultimate decisionmaker would have found that the alleged facts, if true, constitute sexual harassment. When the President and Ms. Jones settled the case last week, the Eighth Circuit Court of Appeals was still considering the preliminary legal question whether the facts as alleged could constitute sexual harassment.

After the suit was first filed in 1994, the President attempted to delay the trial until his Presidency was over. The President claimed a temporary Presidential immunity from civil suit. The case proceeded to the Supreme Court. At oral argument, the President's attorney specifically warned our Nation's highest Court that if Ms.

Jones won, her lawyers would be able to investigate the President's relationships with other women, as is common in sexual harassment cases. The Supreme Court rejected the President's constitutional claim—and did so by a nine to zero vote. The Court concluded that the Constitution did not provide such a temporary immunity from suit.

The idea was simple and powerful: No one is above the law. The Supreme Court sent the case back for trial with words that warrant emphasis: "Like every other citizen who invokes" the District Court's jurisdiction, Ms. Jones "has a right to an orderly disposition of her claims."

After the Supreme Court's decision, the parties started to gather the facts. The parties questioned relevant witnesses in depositions. They submitted written questions. They made requests for documents.

Sexual harassment cases are often "he said-she said" disputes. Evidence reflecting the behavior of both parties can be critical—including the defendant's relationships with other employees in the workplace.

Such questions can be uncomfortable, but they occur every day in courts and law offices around the country. Individuals take an oath to tell the truth, the whole truth, and nothing but the truth. And no one is entitled to lie under oath simply because he or she does not like the questions or because he believes the case is frivolous or financially motivated or politically motivated. The Supreme Court has emphatically and repeatedly rejected the notion that there is ever a privilege to lie. The Court has stated that there are ways to object to questions; lying under oath is not one of them.

During the fact-gathering process, Judge Susan Webber Wright followed the standard principles of sexual harassment cases. Over repeated objection from the President's attorneys, the Judge permitted inquiries into the President's relationships with government employees. On January 8, 1998, for example, Judge Wright stated that questions as to the President's relationships with other employees "are within the scope of the issues in this case."

In making these rulings, Judge Wright recognized that the questions might prove embarrassing. She stated that "I have never had a sexual harassment case where there was not some embarrassment." She also stated that she could not protect the parties from embarrassment.

Let me summarize the five points that explain how the President's relationship with Ms. Lewinsky—what was otherwise private conduct—became a matter of concern to the courts. This is critical to fully understand the nature of the committee's inquiry.

*One.* The President was sued for sexual harassment, and the Supreme Court ruled that the case should go forward.

*Two.* The law of sexual harassment and the law of evidence allow the plaintiff to inquire into the defendant's relationships with other women in the workplace, which in this case included President Clinton's relationship with Ms. Lewinsky.

*Three.* Applying those settled legal principles, Judge Susan Webber Wright repeatedly rejected the President's objections to such inquiries. The Judge, instead, ordered the President to answer the questions.

*Four.* It is a federal crime to commit perjury and obstruct justice in civil cases, including sexual harassment cases. Violators are subject to a sentence of up to ten years imprisonment for obstruction and up to five years for perjury.

*Five.* The evidence suggests that the President and Ms. Lewinsky made false statements under oath and obstructed the judicial process in the *Jones* case by preventing the court from obtaining the truth about their relationship.

At his grand jury appearance, the President invoked a Supreme Court Justice's confirmation hearings as a comparison to his current situation. The President's use of the analogy did not fit the facts in the Monica Lewinsky matter, however. The President's having raised the analogy, let me make it more fitting to the case here.

Suppose that there is a nominee for a high government position. Assume that there is an allegation of sexual harassment. Suppose that several women other than the accuser who have worked with the nominee testify before the Senate Judiciary Committee. Suppose that the nominee confers with one of those women ahead of time, and that they agree that they will both lie to the Judiciary Committee about their relationship. Assume further that they both do lie under oath about their relationship. And suppose further that a criminal investigation develops and the nominee again lies under oath to the grand jury. If that were proved to have happened, what would the Senate Judiciary Committee do?

Suppose that the lying under oath and obstruction of justice occurs in a sexual harassment suit brought against the nominee. Suppose further that the false statements and obstruction continue into a subsequent criminal investigation. What would this committee do with compelling evidence of perjury and obstruction of jus-

tice committed by, for example, a Justice of the Supreme Court in a sexual harassment suit in which he was the defendant?

Those hypotheticals—which track the facts of this case—put in relief the issue before the committee. Let me again stress that the House, not an independent counsel, has the sole power to impeach. I am suggesting that consideration of our referral be focused on the issues actually presented by the referral.

*C. The President's Actions: December 5—January 17*

I will next turn to some of the essentials of the referral. That will include the specifics of Ms. Lewinsky's involvement in the *Jones* case and the President's actions in response to that involvement.

The key point about the President's conduct is this. On at least six different occasions—from December 17, 1997, through August 17, 1998—the President had to make a decision. He could choose truth, or he could choose deception. On all six occasions, the President chose deception—a pattern of calculated behavior over a span of months.

On December 5, 1997, Ms. Jones's attorneys identified Ms. Lewinsky as a potential witness. Within a day, the President learned that Ms. Lewinsky's name was on the witness list.

After learning this, the President faced his first critical decision. Would he and Monica Lewinsky tell the truth about their relationship? Or would they provide false information—not just to a spouse or to loved ones—but under oath in a court of law?

Eleven months ago, the President made his decision. At approximately 2:00 a.m. on December 17, 1997, he called Ms. Lewinsky at her Watergate apartment and told her that she was on the witness list. This was news to Ms. Lewinsky. And it bears noting that the President—not his lawyer—made this call to the witness.

During this 2:00 a.m. conversation, which lasted approximately half an hour, the President could have told Ms. Lewinsky that they must tell the truth under oath. The President could have explained that they might face embarrassment but that, as a citizen and as President, he could not lie under oath and he could not sit by while Monica did so. The President did not say anything like that.

On the contrary, according to Ms. Lewinsky, the President suggested that she could sign an affidavit and use—under oath—deceptive cover stories that they had devised long ago to explain why Ms. Lewinsky had visited the Oval Office area. The President did not explicitly instruct Ms. Lewinsky to lie. He did not have to. Ms. Lewinsky testified that the President's suggestion that they use the pre-existing cover stories amounted to a continuation of their pattern of concealing their intimate relationship. Starting with this conversation, the President and Ms. Lewinsky understood, according to Ms. Lewinsky, that they were both going to make false statements under oath.

The conversation between the President and Ms. Lewinsky on December 17 was a critical turning point. The evidence suggests that the President chose to engage in a criminal act—to reach an understanding with Ms. Lewinsky that they would both make false statements under oath. At that moment, the President's intimate relationship with a subordinate employee was transformed into an unlawful effort to thwart the judicial process. This was no longer an issue of private conduct.

Recall that the Supreme Court had concluded that Paula Jones was entitled to an "orderly disposition" of her claims. The President's action on December 17 was his first direct effort to thwart the Supreme Court's mandate.

The story continued: The President faced a second choice. On December 23, 1997, the President submitted under oath a written answer to an interrogatory. The request stated in relevant part: "Please state the name . . . of [federal employees] with whom you had sexual relations when you [were] . . . President of the United States." In his sworn answer, the President stated "None."

On December 28, the President faced a third critical choice. On that day, the President met with Ms. Lewinsky at the White House. They discussed the fact that Ms. Lewinsky had been subpoenaed for gifts she had received from the President. According to Ms. Lewinsky, she raised the question of what she should do with the gifts. Later that day, the President's personal secretary, Betty Currie, drove to Ms. Lewinsky's Watergate home. Ms. Lewinsky gave Ms. Currie a sealed box that contained some of the subpoenaed gifts. Ms. Currie then stored the box under her bed at home.

In her written proffer on February 1, four weeks after the fact, Ms. Lewinsky stated that Ms. Currie had called her to retrieve the gifts. If so, that necessarily meant that the President had asked Ms. Currie to call. It would directly and undeniably implicate him in an obstruction of justice. Ms. Lewinsky later repeated that statement in testimony under oath. Ms. Currie, for her part, recalls Ms. Lewinsky calling

her. But even if Ms. Lewinsky called Ms. Currie, common sense and the evidence suggest some Presidential knowledge or involvement, as the referral explains.

Let me add another point about the gifts. In his grand jury appearance in August, the President testified that he had no particular concern about the gifts in December 1997 when he had talked to Ms. Lewinsky about them. And he thus suggested that he would have had no reason to take part in December in a plan to conceal the gifts. But there is a serious problem with the President's explanation. If it were true that the President in December was unconcerned about the gifts, he presumably would have told the truth under oath in his January deposition about the large number of gifts that he and Ms. Lewinsky had exchanged. But he did not tell the truth. At that deposition, when asked whether he had ever given gifts to Monica Lewinsky, and he had given her several on December 28, the President stated "I don't recall. Do you know what they were?"

In short, the critical facts to emphasize about the transfer of gifts are these: First, the President and Ms. Lewinsky met and discussed what should be done with the gifts subpoenaed from Ms. Lewinsky. Second, the President's personal secretary Ms. Currie drove later that day to Ms. Lewinsky's home to pick up the gifts. Third, Ms. Currie stored the box under her bed.

Meanwhile, the legal process continued to unfold, and the President took other actions that had the foreseeable effect of keeping Ms. Lewinsky "on the team." The President helped Ms. Lewinsky obtain a job in New York. His efforts began after the Supreme Court's decision in May 1997—at a time when it had become foreseeable that she could be an adverse witness against the President. These job-related efforts intensified in December 1997 after Ms. Lewinsky's name appeared on the witness list.

Vernon Jordan, who had been enlisted in the job search for Ms. Lewinsky, testified that he kept the President informed of the status of Ms. Lewinsky's job search and her affidavit. On January 7, 1998, Mr. Jordan told the President that Ms. Lewinsky had signed the affidavit. Mr. Jordan stated to the President that he was still working on getting her a job. The President replied, "Good." In other words, the President, knowing that a witness had just signed a false affidavit, encouraged his friend to continue trying to find her a job. After Ms. Lewinsky received a job offer from Revlon on January 12, Vernon Jordan called the President and said: "Mission accomplished."

As is often the situation in cases involving this kind of financial assistance, no direct evidence reveals the President's intent in assisting Ms. Lewinsky. Ms. Lewinsky testified that no one promised her a job for silence; of course, crimes ordinarily do not take place with such explicit discussion. But federal courts instruct juries that circumstantial evidence is just as probative as direct evidence. And the circumstantial evidence here is strong. At a bare minimum, the evidence suggests that the President's job assistance efforts stemmed from his desire to placate Ms. Lewinsky so that she would not be tempted—under the burden of an oath—to tell the truth about the relationship. Monica Lewinsky herself recognized that at the time, saying to a friend, "Somebody could construe or say, 'Well, they gave her a job to shut her up. They made her happy.'"

And given that the President's plan to testify falsely could succeed only if Ms. Lewinsky went along, the President naturally had to be concerned that Ms. Lewinsky at any time might turn around and decide to tell the truth. Indeed, some wanted her to tell the truth. For example, one friend talked to Ms. Lewinsky about the December 28 meeting with the President. The friend stated that she was concerned because she "didn't want to see [Monica] being like Susan McDougal" and did not want Monica "to lie to protect the President." Needless to say, any sudden decision by Ms. Lewinsky to tell the truth, whether out of anger at the President or simple desire to be law-abiding, would have been very harmful to the President. That helps to explain his motive in providing job assistance.

In mid-January, Ms. Lewinsky finalized her false affidavit with her attorney, who sent it to Judge Wright's Court. The affidavit falsely denied a sexual relationship with the President and essentially recounted the cover stories they had discussed in their middle-of-the-night conversation on December 17.

Let me turn to the President's January 17 deposition. Some have suggested that the President might have been surprised or ambushed at his deposition. Those suggestions are wrong. The President had clear warning that there would be questions about Monica Lewinsky. She had been named on the December 5 witness list. On January 12, only five days before the deposition, Ms. Jones's attorneys identified Ms. Lewinsky as a trial witness. In response, Judge Wright approved her as a witness. Two days later, on January 14, the President's private attorney asked Ms. Lewinsky's attorney to fax Ms. Lewinsky's affidavit. During the deposition itself, the

President's attorney stated that the President was "fully familiar" with Ms. Lewinsky's affidavit.

At the outset of his January 17 deposition, therefore, the President faced a fourth critical decision. Fully aware that he would likely receive questions about Ms. Lewinsky, would the President continue to make false statements under oath—this time in the presence of a United States District Judge?

At the start of the deposition, Judge Susan Webber Wright administered the oath. The President swore to tell the truth, the whole truth, and nothing but the truth. As his testimony began, the President, in response to a question from Ms. Jones's attorneys, stated that he understood he was providing his testimony under the penalty of perjury.

The President was asked a series of questions about Ms. Lewinsky. After a few questions, the President's attorney—Mr. Bennett—objected to the questioning about Ms. Lewinsky, referring to it as "innuendo." Mr. Bennett produced Ms. Lewinsky's false affidavit. Mr. Bennett stated to Judge Wright that Ms. Lewinsky's affidavit indicated that "there is absolutely no sex of any kind in any manner, shape, or form." Mr. Bennett stated that the President was "fully aware of Ms. Lewinsky's affidavit." During Mr. Bennett's statements, the President sat back and let his attorney mislead Judge Wright. The President said not a word—to the Judge or, so far as we are aware, to his attorney.

Judge Wright overruled Mr. Bennett's objection. The questioning continued. In response, the President made false statements not only about his intimate relationship with Ms. Lewinsky, but about a whole host of matters. The President testified that he did not know that Vernon Jordan had met with Ms. Lewinsky and talked about the *Jones* case. That was untrue.

He testified that he could not recall being alone with Ms. Lewinsky. That was untrue. He testified that he could not recall ever being in the Oval Office hallway with Ms. Lewinsky except perhaps when she was delivering pizza. That was untrue. He testified that he could not recall gifts exchanged between Ms. Lewinsky and him. That was untrue. He testified—after a 14-second pause—that he was "not sure" whether he had ever talked to Ms. Lewinsky about the possibility that she might be asked to testify in the lawsuit. That was untrue. The President testified that he did not know whether Ms. Lewinsky had been served a subpoena at the time he last saw her in December 1997. That was untrue. When his attorney read Ms. Lewinsky's affidavit denying a sexual relationship, the President stated that the affidavit was "absolutely true." That was untrue.

The evidence thus suggests that the President—long aware that Ms. Lewinsky was a likely topic of questioning at his deposition—made not one or two, but a series of false statements under oath. The President further allowed his attorney to use Ms. Lewinsky's affidavit, which the President knew to be false, to deceive the Court. This evidence suggests that the President directly contravened the oath he had taken—as well as the Supreme Court's mandate, in which the Court had stated that Ms. Jones was entitled, like every other citizen, to a lawful disposition of her case.

#### *D. The President's Actions: January 17–21*

As our referral outlines, the President's deposition did not mark the end of the scheme to conceal. During his deposition testimony, the President referred to his secretary Betty Currie. The President testified, for example, that Ms. Lewinsky had come to the White House to see Ms. Currie, not him; that Ms. Currie had been involved in assisting Ms. Lewinsky in her job search; and that Ms. Currie had communicated with Vernon Jordan about Mr. Jordan's assistance to Ms. Lewinsky. In response to one question at the deposition, the President said he did not know the answer and "you'd have to ask Betty."

Given the President's repeated references to Ms. Currie and his suggestion to Ms. Jones's attorneys that they contact her, the President had to know that Ms. Jones's attorneys might want to question Ms. Currie. Shortly after 7:00 p.m. on Saturday, January 17—just two and a half hours after the deposition—the President attempted to contact Ms. Currie at her home. The President asked Ms. Currie to come to the White House the next day, which she did, although it was unusual for her to come in on a Sunday. According to Ms. Currie, the President appeared concerned and made a number of statements about Ms. Lewinsky to Ms. Currie. The statements included:

"You were always there when she was there, right? We were never really alone."  
"You could see and hear everything."

Ms. Currie concluded that the President wanted her to agree with him when he made these statements. Ms. Currie stated that she did in fact indicate her agreement—although she knew that the President and Ms. Lewinsky had been alone and that she could not hear or see them when they were alone.

Ms. Currie further testified that the President ran through the same basic statements with her again on January 20 or 21.

What is important with respect to these two episodes is that at the time the President made these statements, he knew that they were false. He knew he had been alone with Ms. Lewinsky. He knew Ms. Currie could not see or hear everything. The President thus could not have been trying to refresh his recollection, as he subsequently suggested. That raises the question: Is there a legitimate explanation for the President to have said those things in that manner to Ms. Currie? The circumstances suggest not. The facts suggest that the President was attempting to improperly coach Ms. Currie, at a time when he could foresee that she was a potential witness in *Jones v. Clinton*.

*E. The President's Actions: January 21–August 17*

The President's next major decision came in the days immediately after January 21. On the 21st, the Washington Post publicly reported the story of Ms. Lewinsky's relationship with the President. After the public disclosure of his relationship with Ms. Lewinsky and the ongoing criminal investigation, the President faced a decision. Would he admit the relationship publicly, correct his testimony in Ms. Jones's case, and ask for the indulgence of the American people? Or would he continue to deny the truth?

For this question, the President consulted others. According to Dick Morris, the President and he talked on January 21. Mr. Morris suggested that the President publicly confess. The President replied "But what about the legal thing? You know, the legal thing? You know, Starr and perjury and all." Mr. Morris suggested they take a poll. The President agreed. Mr. Morris called with the results. He stated that the American people were willing to forgive adultery but not perjury or obstruction of justice. The President replied, "Well, we just have to win, then."

Over the next several months, it became apparent that the strategy to win had many prongs. First, the President denied the truth publicly and emphatically. Second, he publicly promised to cooperate with the investigation. Third, the President deflected and diverted the investigation by telling aides false stories that were then relayed to the grand jury. Fourth, he refused invitations to testify to the grand jury for over six months. Fifth, his Administration delayed the investigation through multiple privilege claims, each of which has been rejected by the Federal courts. Sixth, surrogates of the President attacked the credibility and legitimacy of the grand jury investigation. Seventh, surrogates of the President attempted to convince the Congress and the American people that the matter was unimportant.

The first step was for the President to deny the truth publicly. For this, political polling led to Hollywood staging. The President's California friend and producer Harry Thomason flew to Washington and advised that the President needed to be very forceful in denying the relationship. On Monday, January 26, in the Roosevelt Room, before Members of Congress and other citizens, the President provided a clear and emphatic public statement denying the relationship.

The President also made false statements to his Cabinet and aides. They then spoke publicly and professed their belief in the President.

The second step was to promise cooperation. The President told the American people on several television and radio shows on January 21 and 22 that "I'm going to do my best to cooperate with the investigation."

The third step was the President's refusal to provide testimony to the grand jury despite six invitations to do so and despite his public promise to cooperate. Refusing invitations to provide information to a grand jury in a Federal criminal investigation authorized by the Attorney General of the United States—and one in which there is a high national interest in prompt completion—was inconsistent with the President's initial January promise to cooperate and with the general statutory duty of all government officials to cooperate with Federal criminal investigations.

As a fourth step, the President not only refused to testify himself, but he authorized the use of various *governmental* privileges to delay the testimony of many of his taxpayer-paid assistants. The extensive use of governmental privileges against grand jury and criminal investigations has, of course, been a pattern throughout the Administration. Most notably, the White House cited privilege in 1993 to prevent Justice Department and Park Police officials from reviewing documents in Vincent Foster's office in the days after his death.

In the Lewinsky investigation, the President asserted two privileges, Executive Privilege and a government attorney-client privilege. A subordinate Administration official, without objection from the President, claimed a previously unheard-of privilege that was called the protective function privilege. The privileges were asserted to prevent the full testimony of several White House aides and the full testimony of the sworn law enforcement officers of the Secret Service.

In asserting Executive Privilege, the President was plowing headlong into the Supreme Court's unanimous decision 24 years ago in *United States v. Nixon*. There, the Supreme Court ruled that Executive Privilege was overcome by the need for relevant evidence in criminal proceedings. And thus, it came as no surprise that Chief Judge Norma Holloway Johnson rejected President Clinton's effort to use Executive Privilege to prevent disclosure of relevant evidence.

In asserting protective function and government attorney-client privileges, the Administration was asking the Federal courts to make up one new privilege out of whole cloth and to apply another privilege in a context in which no Federal court had ever applied it before. And thus it again came as little surprise that the Federal courts rejected the Administration's claims. Indeed, as to the government attorney-client claim, the D.C. Circuit and the District Court, like the Eighth Circuit a year ago, stated that the President's position not only was wrong but would authorize a "gross misuse of public assets." The Supreme Court refused to grant review of the cases notwithstanding the Administration's two strongly worded petitions.

This point bears emphasis: The Administration justified its many privilege claims by claiming an interest in protecting the Presidency, not the President personally. But that justification is dubious for two reasons. First, Presidents Carter and Reagan waived all government privileges at the outset of criminal investigations in which they were involved. The examples set by those two Presidents demonstrate that such privilege claims in criminal investigations are manifestly unnecessary to protect the Presidency. Second, these novel privilege claims were quite weak as a matter of law.

And that raises a question: What was it about the Monica Lewinsky matter that generated the Administration's particularly aggressive approach to privileges? The circumstantial evidence suggests an answer: delay. Indeed, when this Office sought to have the Supreme Court decide all three privilege claims at once this past June, the Administration opposed expedited consideration.

Not only did the Administration invoke these three losing privileges, but the President publicly suggested that he had not invoked Executive Privilege when in fact he had. On March 24, 1998, while travelling in Africa, the President was asked about Executive Privilege. He stated in response: "You should ask someone who knows. . . . I haven't discussed that with the lawyers. I don't know." But White House Counsel Charles Ruff had filed an affidavit in Federal court only seven days earlier in which he swore that he had discussed the assertion of Executive Privilege with the President and the President had approved its invocation.

After Chief Judge Johnson ruled against the President, the President dropped the Executive Privilege claim in the Supreme Court. In August, the President explained to the grand jury why he dropped it. The President stated: "I didn't really want to advance an executive privilege claim in this case beyond having it litigated."

But this statement—to the grand jury—was inaccurate. In truth, the President had again asserted Executive Privilege only a few days earlier. And a few days *after* his grand jury testimony, the President again asserted Executive Privilege to prevent the testimony of Bruce Lindsey. These Executive Privilege cases continue to this day; indeed, one case is now pending in the D.C. Circuit.

When the President and the Administration assert privileges in a context involving the President's *personal* issues; when the President pretends publicly that he knows nothing about the Executive Privilege assertion; when the President and the Administration rebuff our Office's efforts to expedite the cases to the Supreme Court; when the President contends in the grand jury that he never really wanted to assert Executive Privilege beyond having it litigated—despite the fact that he had asserted it six days earlier and did so again eleven days afterwards, there is substantial and credible evidence that the President has misused the privileges available to his Office. And the misuse delayed and impeded the Federal grand jury's investigation.

The fifth tactic was diversion and deflection. The President made false statements to his aides and associates about the nature of the relationship—with knowledge that they could testify to that effect to the grand jury sitting here in Washington. The President did not simply say to his associates that the allegations were false or that the issue was a private matter that he did not want to discuss. Instead, the President concocted alternative scenarios that were then repeated to the grand jury.

The final two tactics were related: (i) to attack the grand jury investigation, including the Justice Department prosecutors in my Office—to declare war, in the words of one Presidential ally—and (ii) to shape public opinion about the proper resolution of the entire matter. It is best that I leave it to someone outside our Office to elaborate on the war against our Office. But no one really disputes that those tactics were employed—and continue to be employed to this day.

*F. The President's Actions: August 17*

This strategy proceeded for nearly 7 months. It changed course in August after Monica Lewinsky reached an immunity agreement with our Office, and the grand jury, after deliberation, issued a subpoena to the President.

The President testified to the grand jury on August 17. Beforehand, many in Congress and the public advised that the President should tell the whole truth. They cautioned that the President could not lie to the grand jury. Senator Hatch, for example, stated that "So help me, if he lies before the grand jury, that will be grounds for impeachment." Senator Moynihan stated simply that perjury before the grand jury was, in his view, an impeachable offense.

The evidence suggests that the President did not heed this Senatorial advice. Although admitting to an ambiguously defined inappropriate relationship, the President denied that he had lied under oath at his civil deposition. He also denied any conduct that would establish that he had lied under oath at his civil deposition. The President thus denied certain conduct with Ms. Lewinsky and devised a variety of tortured and false definitions.

The President's answers have not been well received. Congressman Schumer, for one, stated that "it is clear that the President lied when he testified before the grand jury." Congressman Meehan stated that the President engaged in a "dangerous game of verbal Twister." Indeed, the President made false statements to the grand jury and then that same evening spoke to the Nation and criticized all attempts to show that he had done so as invasive and irrelevant. The President's approach appeared to contravene the oath he took at the start of the grand jury proceedings. It also disregarded the admonitions of those Members of Congress who warned that lying to the grand jury would not be tolerated. It also discounted Judge Wright's many orders in which she had ruled that this kind of evidence was relevant in the *Jones* case.

And thus ended the over-eight-month journey that had begun on December 5, 1997, when Monica Lewinsky's name appeared on the witness list. The evidence suggests that the eight months included false statements under oath, false statements to the American people, false statements to the President's Cabinet and aides, witness tampering, obstruction of justice, and the use of Presidential authority and power in an effort to conceal the truth of the relationship and to delay the investigation.

### III. JURISDICTION

Given the serious nature of perjury and obstruction of justice, regardless of its setting, it is obvious that the actions of the President and Ms. Lewinsky to conceal the truth warranted criminal investigation. Let me explain how the investigation came to be handled by our Office rather than by the Department of Justice or some new independent counsel. The explanation is straightforward.

On January 8, an attorney in my Office was informed that a witness (who was Linda Tripp, a witness in prior investigations), had information she wanted to provide. A message was conveyed back that she should provide her information directly. Ms. Tripp called our Office on January 12. In that conversation and later, she provided us a substantial amount of information.

Let me pause here and emphasize that our Office, like most law enforcement agencies, has received innumerable tips about a wide variety of matters over the past four years—from Swiss bank accounts to drug smuggling. You name it. We have heard it. In each case, we must make an initial assessment whether it is a serious tip or a crank call, as well as an assessment of jurisdictional issues.

We handled the information from Ms. Tripp in this same manner. When we confirmed that the information appeared credible, we reached out to the Department of Justice, as we have done regularly during my tenure as independent counsel. We contacted Deputy Attorney General Eric Holder within 48 hours after Ms. Tripp provided us information. The next day, we fully informed the Deputy Attorney General about Ms. Tripp's information. About Ms. Tripp's tapes and the questions concerning their legality under state law. About the consensual FBI recording of Ms. Tripp and Ms. Lewinsky. About the indications that Vernon Jordan was providing employment assistance to a witness who had the potential to harm the President—a fact pattern that we had seen in the Webster Hubbell investigation, as I shall describe presently.

We discussed jurisdiction. We noted that it is in everyone's interest to avoid time-consuming jurisdictional challenges. We stated that the Lewinsky investigation could be considered outside our jurisdiction as then constituted. We stressed that someone needed to work the case: the Justice Department or an independent counsel.

Later that evening, the Deputy Attorney General telephoned and reported that the Attorney General had tentatively decided to assign the matter to us. Before her decision was final, we reviewed the evidence in detail with two experienced career prosecutors in the Department. One senior Justice Department prosecutor listened to portions of the FBI tape. The Attorney General made her final decision on Friday, January 16. That day, through a senior career prosecutor, the Attorney General asked the three-Judge Special Division to expand our jurisdiction. The Special Division granted the request that day.

In short, our entry into this investigation was standard, albeit expedited, procedure.

#### IV. REFERRAL STANDARDS

Seven months later, after conducting the factual investigation and after the President's grand jury testimony, the question we faced was what to do with the evidence. Section 595(c) of Title 28 in the independent counsel statute requires an independent counsel investigating possible crimes to provide to the House of Representatives—in the words of the statute—"substantial and credible information that may constitute grounds for an impeachment."

This reporting provision suggests a statutory preference that possible criminal wrongdoing by the President be addressed in the first instance by the House of Representatives. It also requires an analysis of the law of impeachment.

As we understood the text of the Constitution, its history, and relevant precedents, it was clear that obstruction of justice in its various forms, including perjury, "may constitute grounds for an impeachment." Even apart from any abuses of Presidential authority and power, the evidence of perjury and obstruction of justice required us to refer this information to the House.

Perjury and obstruction of justice are, of course, serious crimes. In 1790, the First Congress passed a criminal law that banned perjury. A violator was subject to three years' imprisonment. Today, Federal criminal law makes perjury a felony punishable by five years' imprisonment.

In cases involving public officials, courts treat false statements with special condemnation. United States District Judge Royce Lamberth recently sentenced Ronald Blackley, former Chief of Staff to the former Secretary of Agriculture, to 37 months' imprisonment for false statements. The Court stated that it "has a duty to send a message to other high-level government officials that there is a severe penalty to be paid for providing false information under oath."

Although perjury and obstruction of justice are serious Federal crimes, some have suggested that they are not high crimes or misdemeanors when the underlying events concern the President's private actions. Under this theory, a President's obstruction and perjury must involve concealment of official actions. This interpretation does not appear in the Constitution itself. Moreover, the Constitution lists bribery as a high crime or misdemeanor. And if a President involved in a civil suit bribed the judge to rule in his favor or bribed a witness to provide favorable testimony, there could be no textual question that he had committed a high crime or misdemeanor under the plain language of Article II—even though the underlying events would not have involved his official duties. In addition, virtually everyone agrees that serious crimes such as murder and rape would be impeachable even though they do not involve official duties.

Justice Story stated in his famous Commentaries that there is not a syllable in the Constitution which confines impeachment to official acts. With respect, an absolute and inflexible requirement of a connection to official duties appears, fairly viewed, to be an incorrect interpretation of the Constitution.

History and practice support the conclusion that perjury, in particular, is a high crime or misdemeanor. Perjury has been the basis for the removal of several judges. As far as we know, no one questioned whether perjury was a high crime or misdemeanor in those cases. In addition, as several of the scholars who appeared before you testified, perjury seems to have been recognized as a high crime or misdemeanor at the time of the Founding. And the House Manager's report in the impeachment of Judge Walter Nixon for perjury stated, "It is difficult to imagine an act more subversive to the legal process than lying from the witness stand." And finally, I note that the Federal Sentencing Guidelines include bribery and perjury in the same Guideline (2J1.3), reflecting the common-sense conclusion that bribery and perjury are equivalent means of interfering with the governmental process.

For these reasons, we concluded that perjury and obstruction of justice, like bribery, "may constitute grounds for an impeachment." Having said that, let me again emphasize my role here. Whether the President's actions are, in fact, grounds for

an impeachment or some other congressional sanction is a decision in the sole discretion of the Congress.

A final point warrants mention in this respect. Criminal prosecution and punishment are not the same as—or a substitute for—congressionally imposed sanctions. As the Supreme Court stated in a 1993 case, “the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses—the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings. The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgment.”

#### V. THE OFFICE OF INDEPENDENT COUNSEL: 1994–1998

Our job over the past several years has involved far more than simply the Monica Lewinsky matter. The pattern of obstruction of justice, false statements, and misuse of executive authority in the Lewinsky investigation did not occur in a vacuum.

##### A. Overview

In August 1994, I took over the Madison Guaranty investigation from Bob Fiske. Over the ensuing years, I have essentially become independent counsel for five distinct investigations: for Madison and Whitewater, for Foster-related matters, for the Travel Office, for the FBI Files matter, and for the Monica Lewinsky investigation—as well as for a variety of obstruction and related matters arising from those five major investigations. A brief overview of those investigations may assist the Committee in its assessment of the President’s conduct.

First, some statistics. Our investigation has resulted in conviction of fourteen individuals, including the former Associate Attorney General of the United States Webster Hubbell, the then-sitting Governor of Arkansas Jim Guy Tucker, and the Clintons’ two business partners Jim and Susan McDougal.

We are proud not only of the cases we have won, but also of our decisions not to indict. To take one well-known example, the Senate Whitewater Committee sent our Office public criminal referrals on several individuals. The Committee stated in its June 21, 1996, public letter that the testimony of Susan Thomases was “particularly troubling and suggests a possible violation of law.” But this Office did not seek charges against her.

Apart from our indictments and convictions, this Office also has faced an extraordinary number of legal disputes—on issues of privilege, jurisdiction, substantive criminal law, and the like. By my count, at least seventeen of our cases have been decided by the federal courts of appeals, and we have won all seventeen. One privilege case arising in our Travel Office investigation went to the D.C. Circuit where we prevailed 2–1 and then to the Supreme Court where we lost 6–3.

We had to litigate in the courts as our investigation ran into roadblocks and hurdles that slowed us down. It is true that the Administration produced a great amount of information. But unlike the prosecutors in the investigations involving Presidents Reagan and Carter, we have been forced to go to court time and again to seek information from the Executive Branch and to fight a multitude of privilege claims asserted by the Administration—every single one of which we have won.

In sum, this Office has achieved a superb record in courts of *law*—of significant and hard-fought convictions, of fair and wise decisions not to charge, of thorough and accurate reports on the Vincent Foster and Monica Lewinsky matters, of legal victories in various courts. We go to court and not on the talkshow circuit. And our record shows that there is a bright line between law and politics, between courts and polls. It leaves the polls to the politicians and spin doctors. We are officers of the court who live in the world of the law. We have presented our cases in court, and with very rare exception, we have won.

##### B. Madison Guaranty: President Clinton and Susan McDougal

The center of all of this—the core of our Arkansas-based investigation—was Madison Guaranty Savings and Loan. Madison was a federally insured savings and loan in Little Rock, Arkansas, run by Jim and Susan McDougal. Like many savings and loans in the 1980’s, Madison was fraudulently operated. Mrs. Clinton and other lawyers at the Rose Law Firm in Little Rock performed legal work for Madison in the 1980’s.

Madison first received national attention in March 1992 when a *New York Times* report raised several issues about the relationship between the Clintons and the McDougals in connection with Madison. Federal bank regulators examined Madison in 1992 and 1993. The regulators sent criminal referrals to the Justice Department, and the Justice Department launched a criminal investigation of Madison in November 1993. In part because of the relationship of the Clintons to the McDougals,

Attorney General Reno appointed Bob Fiske in January 1994. I was appointed Independent Counsel in August 1994 to continue the investigation.

Madison exemplified the troubled practices of savings and loans in the 1980's. The failure of the institution ultimately cost federal taxpayers approximately \$65 million. Congresswoman Waters put it this way in a 1995 hearing: "By any standard, Madison Guaranty was a disaster. . . . It gambled with investments, cooked the books and ultimately bilked the taxpayers of the United States. Madison is a metaphor for the S&L crisis."

The McDougals' operation of Madison raised serious questions whether bank funds had been used illegally to assist business and political figures in Arkansas such as Jim Guy Tucker and then Governor Clinton. As to the Clintons, the question arose primarily because they were partners with the McDougals in the Whitewater Development Company. The Whitewater corporation initially controlled and developed approximately 230 acres of property on the White River in Northern Arkansas. Given Jim McDougal's role at the center of both institutions and given Whitewater's constant financial difficulties, there were two important questions: Were Madison funds diverted to benefit Whitewater? If so, were the Clintons either involved in or knowledgeable of that diversion of funds?

These questions were not idle speculation. In early 1994, a Little Rock Judge and businessman David Hale pled guilty to certain unrelated Federal crimes. As part of his plea, David Hale told Mr. Fiske's team that he had received money as a result of a loan from Madison in 1986 and that his company loaned it to others as part of a scheme to help some members of the Arkansas political establishment.

One loan of \$300,000 went to Susan McDougal's make-believe company, Master Marketing. Based on our investigation, we now know that some \$50,000 of the proceeds of that loan went to benefit the Whitewater corporation. David Hale stated that he had discussed the Susan McDougal loan with Governor Clinton, including at a meeting in 1986 with Jim McDougal and the Governor.

In August 1994, when I first arrived in Little Rock, we devised a plan. First, based on the testimony of David Hale and others, as well as documentary evidence, we would take steps, if appropriate, to seek an indictment of Jim and Susan McDougal and others involved in what clearly appeared to be criminal transactions. If a Little Rock jury convicted the McDougals or others, we would then obtain their testimony and determine whether they had other relevant information—including, of course, whether the McDougals possessed information that would either exonerate or incriminate the Clintons as to Madison and Whitewater matters.

This approach was the time-honored and professional way to conduct the investigation. We garnered a number of guilty pleas in my first year, including from Webster Hubbell, who had worked at the Rose Law Firm and was knowledgeable about its work with Madison, including that of Mrs. Clinton. In addition, Robert Palmer, a real estate appraiser, pled guilty to fraudulently doctoring Madison documents to deceive federal bank examiners. Three other associates of McDougal pled guilty and agreed to cooperate.

In August 1995, a year after I was appointed, a federal grand jury in Little Rock indicted Jim and Susan McDougal and the then-sitting Governor of Arkansas Jim Guy Tucker. The case went to trial in March 1996 amid charges by all three defendants—and their allies—that the case was a political witch hunt. Some predicted that an Arkansas jury would never convict the sitting Governor. Those expectations were heightened when President Clinton was subpoenaed as a defense witness. The President testified for the defense from the Map Room of the White House. During his sworn testimony, the President testified that he did not know about the Susan McDougal loan nor had he ever been in a meeting with Hale and McDougal about the loan. He also testified that he had never received a loan from Madison. This was important testimony. Its truth—or falsity—went to the core issue of our investigation.

On May 28, 1996, all three defendants were convicted—Jim McDougal of 18 felonies, Susan McDougal of four felonies, and Governor Tucker of two felonies. Governor Tucker announced his resignation that day.

After his conviction, Jim McDougal began cooperating with our investigation. We spent many hours with him gaining additional insights and facts. He informed our career investigators and prosecutors that David Hale was accurate. According to Jim McDougal, President Clinton had testified falsely at the McDougal-Tucker trial. Jim McDougal testified he had been at a meeting with David Hale and Governor Clinton about the Master Marketing loan. And Jim McDougal testified that Governor Clinton had received a loan from Madison. Jim McDougal said on one of his first sessions with our Office that the President's trial testimony was, in his words, "at variance with the truth."

In late 1997, we considered whether this evidence justified a referral to Congress. We drafted a report. But we concluded that it would be inconsistent with the statutory standard because of the difficulty of establishing the truth with a sufficient degree of confidence. We also weighed a prudential factor in reaching that conclusion. There were still two outstanding witnesses who might later corroborate—or contradict—the McDougal and Hale accounts: Jim Guy Tucker and Susan McDougal.

In 1998, we were finally able to obtain information from Governor Tucker. It had taken four long years to hear from the Governor. He pled guilty in a tax conspiracy case. When Governor Tucker ultimately testified before the Little Rock grand jury in March and April of this year, he had little knowledge of the loan to Susan McDougal's fictitious company and the President's possible involvement in it. He did shed light on the overall transactions involving Castle Grande and Madison. Importantly, as to one subject, Governor Tucker exonerated the President regarding long-standing questions whether the President and Governor Tucker had a conversation about the Madison referrals in the White House in October 1993.

The remaining witness who perhaps could shed light on the issue was Susan McDougal. And therein lies a story that has caused literally years of delay and added expense to the investigation.

Because the proceeds from the fraudulent loan Susan McDougal received had benefitted the Clintons—the proceeds were used to pay obligations of the Whitewater Development Company for which the Clintons were potentially personally liable—Susan McDougal was subpoenaed to testify before the grand jury in August 1996 and asked several questions at the heart of the investigation, including:

Did you ever discuss your loan from David Hale with William Jefferson Clinton?

To your knowledge, did William Jefferson Clinton testify truthfully during the course of your trial?

Susan McDougal refused to answer any of the questions. District Judge Susan Webber Wright then held her in civil contempt, a decision later upheld by the United States Court of Appeals.

The month of September 1996 thus was a crucial time for our Office in its attempt to obtain Susan McDougal's truthful testimony. On September 23, 1996, just two weeks after Ms. McDougal had been found in contempt by Judge Wright, President Clinton was interviewed on PBS. The President said, "There's a lot of evidence to support" various charges that Susan McDougal had made against this Office. But the President cited no evidence.

The President's comments can reasonably be described as supportive of Ms. McDougal's decision to disobey the court order. So far as we are aware, no sitting President has ever publicly indicated his agreement with a convicted felon's stated reason for refusing to obey a Federal court order to testify. Essentially, the President of the United States, the Chief Executive, sided with a convicted felon against the United States, as represented by United States District Judge Susan Webber Wright, the United States Court of Appeals for the Eighth Circuit, and the Office of Independent Counsel.

The President was also asked in this interview whether he would consider pardoning Ms. McDougal. The President refused to rule out a pardon.

The President's answers to these questions were roundly criticized. A *New York Times* editorial captured the point well, stating that the President's remarks "undercut a legal process that is going forward in an orderly way."

#### *C. Madison Guaranty: Mrs. Clinton and Webster Hubbell*

A separate area of our original investigation concerned the Rose Law Firm's work in 1985 and 1986 for Madison. It appeared that Rose may have assisted Madison in performing legal work concerning a piece of property (IDC/Castle Grande), which involved McDougal, Madison, and fraudulent transactions. The complicated real estate deal known as Castle Grande was structured to avoid state banking regulatory requirements and involved violations of federal criminal law.

Grand jury subpoenas were issued in 1994 and 1995 to the Rose Law Firm and to the President and Mrs. Clinton seeking all documents relating to Madison and Castle Grande. We ultimately learned that Mrs. Clinton had performed some work related to Madison's IDC/Castle Grande transactions, but the whole issue remained partially enshrouded in mystery as our Office and the Senate Whitewater Committee investigated the issue in 1995.

The problem was that some of the best evidence regarding Mrs. Clinton's work—her Rose Law Firm billing records and her time sheets for 1985 and 1986—could not be found. The missing records raised suspicions by late 1995 and became a public issue. Webster Hubbell and Vincent Foster had been responsible during the 1992

campaign for gathering information about Mrs. Clinton's work for Madison. Yet the billing records could not be found. The Rose Firm's work for Madison could not be fully pieced together. The Rose Firm no longer had the records.

On January 5, 1996, the records of Mrs. Clinton's activities at Madison were finally produced under unusual circumstances. The records detailed Mrs. Clinton's work on a variety of Madison issues, including the preparation of an option agreement that Madison used to deceive federal bank examiners as part of the Castle Grande deal. After a thorough investigation, we have found no explanation how the billing records got where they were or why they were not discovered and produced earlier. It remains a mystery to this day. Then, in the summer of 1997, a second set of these billing records was found in the attic of the late Vincent Foster's house in Little Rock. The time sheets for Rose's 1985–86 Madison work have never been found.

We should note that Webster Hubbell may have additional information pertaining to Castle Grande—whether exculpatory or inculpatory—that we have been unable to obtain. Mr. Hubbell was at the Rose Firm at the relevant time in 1985 and 1986, he gathered information about the Madison issue in the 1992 campaign, and his father-in-law Seth Ward was involved in the Castle Grande deal.

Two other important facts suggest that Mr. Hubbell may have additional information. First, on March 13, 1994, after a meeting at the White House where it had been discussed that Mr. Hubbell would resign from the Justice Department, then-Chief of Staff Mack McLarty told Mrs. Clinton that “We’re going to be supportive of Webb.”

As this criminal investigation was beginning in 1994 under Bob Fiske and later my Office, Mr. Hubbell received payments totalling nearly \$550,000 from several companies and individuals. Many were campaign contributors. These individuals had been contacted through the White House Chief of Staff Mr. McLarty. In June 1994, during a week in which he made several visits to the White House, Indonesian businessman James Riady met with Webster Hubbell and then wired him \$100,000. One of the individuals who arranged for Mr. Hubbell to receive a consulting contract was Vernon Jordan. The company that he convinced to hire Hubbell was MacAndrews & Forbes, parent company of Revlon—the same company that later hired Monica Lewinsky upon Mr. Jordan's recommendation. As he was destined later to do with Monica Lewinsky, Mr. Jordan personally informed the President about his assistance to Mr. Hubbell.

Most of the \$550,000 was given to Mr. Hubbell for little or no work. This rush of generosity obviously gives rise to an inference that the money was essentially a gift. And if it was a gift, why was it given? This money was given despite the fact that Mr. Hubbell was under criminal investigation for fraudulent billing and was a key witness in the Madison Guaranty investigation.

Second, as is known to the public, on certain prison tapes while Mr. Hubbell was in prison, he said to his wife: “I won't raise those allegations that might open it up to Hillary.” On another tape, Mr. Hubbell said to White House employee Marsha Scott that he might “have to roll over one more time.”

Mr. Hubbell's statements—when combined with the amount of money he received and the information he was in a position to know—raise very troubling questions. Mr. Hubbell is currently under federal indictment, and it would be inappropriate to say more about that at this time.

#### *D. Travel Office*

Let me add a few brief words about the Travel Office matter. This phase of work arose out of investigations by others of the 1993 firings of Billy Dale and six career co-workers. We do not anticipate that any evidence gathered in that investigation will be relevant to the committee's current task. The President was not involved in our Travel Office investigation.

As to the status of that investigation, it was on hold for quite a while, in part because of litigation. The investigation is not terminated, but we expect to announce any decisions and actions soon.

#### *E. FBI Files*

As to the FBI files matter, there are outstanding issues that we are attempting to resolve with respect to one individual. But I can address two issues of relevance to the Committee's work. First, our investigation, which has been thorough, found no evidence that anyone higher than Mr. Livingstone or Mr. Marceca was in any way involved in ordering the files from the FBI. Second, we have found no evidence that information contained in the files of former officials was used for an improper purpose.

## VI. THE OFFICE OF INDEPENDENT COUNSEL

*A. Staff*

Let me now mention a few words about our personnel, about our process, and about our reflections on this investigation. The character and conduct of the men and women of our Office—career professionals who take their jobs and their oaths very seriously—have been badly distorted. Perhaps that is inevitable given the nature of the issues involved in this case and the fact that the President of the United States is the subject of a criminal investigation. But it is regrettable. And so let me offer some truth about the Office.

I will start with our personnel. During the Lewinsky investigation, my staff has included skilled and experienced prosecutors from around the country. They have brought an enormous amount of experience and expertise to the Office. My colleagues during the past year have included a former United States Attorney; the Chief of the Public Corruption unit of the United States Attorney's Office in Los Angeles; the Chief of the Public Corruption unit of the United States Attorney's Office in Miami; the chief of the bank fraud unit of the United States Attorney's office in San Antonio; prosecutors with lengthy experience in the Public Integrity Section of the Department of Justice; seasoned federal prosecutors from ten different States and the District of Columbia; and veteran state prosecutors from Maryland and Oregon.

The Office also has benefitted from the assistance of Sam Dash, Chief Counsel to the Senate Watergate Committee, who has offered great wisdom throughout my tenure as independent counsel. Professor Ronald Rotunda, constitutional law scholar from the University of Illinois, similarly has provided important advice on a variety of issues. The Office also has received assistance from professors at the University of Michigan, the University of Illinois, Notre Dame, and George Washington. Moreover, former law clerks for six different Supreme Court Justices have served on my staff during the past year.

During the Lewinsky investigation, the Office also relied on many talented investigators with extensive service in the FBI and other law enforcement agencies. And the FBI Laboratory yet again provided superb assistance, as it has throughout the Madison/Whitewater investigation.

In addition, let me express my great appreciation for the grand jurors who devoted much time and energy to examining the witnesses and considering the evidence. Those 23 citizens of the District of Columbia have performed invaluable service, and I publicly thank them. This is the rare case where grand jury transcripts become publicly scrutinized, and as you now know, these grand jurors were active, knowledgeable, fair, and completely dedicated to uncovering and understanding the truth.

*B. The Process*

In all of our investigations, difficult decisions have been taken through our Office's deliberative process. The process calls upon each attorney—drawing upon his or her background and experience—to offer views on issues in question. This deliberative process is laborious, sometimes tedious. But it is an attempt to ensure that our Office makes the best decisions it can. I have drawn upon a vast array of experienced prosecutors and investigators because I was sensitive to—and am sensitive to—the fact that an independent counsel exists outside the Justice Department and is an unusual entity within our constitutional system.

Throughout this investigation, we have made every effort to follow Department of Justice practice and policy and to utilize time-honored law enforcement techniques. Of course, with their vast experience in the Department and FBI, my prosecutors and investigators embody such policy and practice. Nonetheless, it was often the case during an all-attorneys meeting that we would repair to the United States Attorney's Manual to be sure we had it right. It is true that some traditional law enforcement procedures may not be entirely comfortable for some witnesses. But the procedures have been refined over decades of practice in which society's right to detect and prosecute crime has been balanced against individual liberty. It was not our place to reinvent the investigative wheel. Nor was it our place to discard law enforcement practices that are used every day by prosecutors and police throughout the country.

*C. Decisions During the Investigation*

With that, let me be the first to say that the Lewinsky investigation, in particular, presented some of the most challenging issues any lawyer could face. We had to make numerous difficult decisions—and often had to do so quickly. Those included factual judgments (is witness X or witness Y telling us the whole truth?), strategic

choices (do we provide immunity to Ms. Lewinsky in order to obtain her testimony? Is it appropriate to subpoena the President?), legal decisions (Do we accept the assertion of Executive Privilege for Bruce Lindsey or do we go to court to challenge it? What about the asserted Secret Service privilege?), and historic constitutional judgments (what is the meaning of Section 595(c) of the independent counsel statute and how do we write a referral that satisfies its requirements?).

Major decisions during-the Lewinsky investigation have not been easy. And given the hurricane-force political winds swirling about us, we were well aware that, no matter what decision we made, criticism would come from somewhere. As Attorney General Reno has said, in high-profile cases like these, you are damned if you do and damned if you don't, so you'd better just do what you think is the right and fair thing.

We also attempted to be thorough. But we did not invent that approach just for the Lewinsky case. To take just one previous example, in investigating matters relating to the death of Vincent Foster, we were painstaking in examining evidence, questioning witnesses, and calling upon experts in homicide and suicide. We were criticized during that investigation for being too thorough, taking too long. But time has proved the correctness of our approach. After an extensive investigation, the Office produced a report that addressed the many questions, confronted the difficult issues, laid out new evidence, and reached a definitive conclusion. Over time, the controversy over the Foster tragedy has dissipated because we insisted on being uncompromisingly thorough both in the investigation and in our report.

After the Attorney General and the Court of Appeals assigned us the Lewinsky investigation, the Office again received criticism for being too thorough. But the Lewinsky investigation could not be properly conducted in a slapdash manner. It was our duty to be meticulous, to be careful. We were. And in the process, we uncovered substantial and credible evidence of serious legal wrongdoing by the President.

Some then suggested that the report we submitted to Congress was *too* thorough. But bear in mind that we submitted the referral, as we were required by statute, to the House of Representatives, not to the public. And we must dispute the suggestion that a report to the House suggesting possible impeachable offenses committed by the President of the United States should tell something less than the full story. The facts, the story are critical—they affect credibility, they are necessary to avoid a distorted picture, they ultimately are the basis for a just conclusion. As a result, just as the jurors found the details of specific land deals critical in our trial of Governor Jim Guy Tucker and the McDougals, just as the Supreme Court includes the details of grisly murders in its death penalty cases, so too the details of the President's relationship with Ms. Lewinsky became relevant—indeed, critical—in determining whether and the extent to which the President made false statements under oath and otherwise obstructed justice in both the *Jones v. Clinton* case and then again in his grand jury testimony.

As you know, by an overwhelming bipartisan vote, the House immediately disclosed our referral to the public. But I want to be clear that the public disclosure or non-disclosure of the referral and the backup materials was a decision our Office did not make—and lawfully could not make. We had no way of knowing in advance of submitting the referral, and we did not know, whether the House would publicly release both the report and the backup materials; would release portions of one or both; would release redacted versions of the report and backup documents; would prepare and release a summary akin to Mr. Schippers' oral presentation; or would simply keep the referral and backup materials under seal just as Special Prosecutor Jaworski's submission in 1974 remained under seal. As a result, we respectfully but firmly reject the notion that our Office was trying to inflame the public. We are professionals, and we were trying to get the relevant facts, the full story, to the House of Representatives. That was our task. And that is what we did.

In fact, the referral has served a purpose. There has been virtually no dispute about a good many of the factual conclusions in the report. In the wake of the referral, for example, few have ventured that the President told the truth, the whole truth, and nothing but the truth in his civil case and before the grand jury. A key reason, we submit, is that we insisted—as we have in our other investigations—that we be exhaustive in the investigation and that we document the facts and conclusions in our report.

#### *D. Reflections*

I want to be absolutely clear on one point, however. Any suggestion that the men and women of our Office enjoyed or relished this investigation is wrong. It is nonsense. In at least three ways, the Lewinsky investigation caused all of us considerable dismay—and continues to do so.

First, none of us has any interest whatsoever in investigating the factual details underlying the allegations of perjury and obstruction of justice in this case. My staff and I agree with the sentiments expressed by Chairman Hyde in the November 9 hearing when he said “I’d like to forget all of this. I mean, who needs it?” But the Constitution and the criminal law do not have exceptions for unseemly or unpleasant or difficult cases. The Attorney General and the Court of Appeals assigned us a duty to pursue the facts. And we did so.

Second, this investigation has proved difficult for us because it centered on legal wrongdoing by the President of the United States. The Presidency is an Office that we—like all Americans—revere and respect. No prosecutor is comfortable when he or she reports wrongdoing by the President. All of us want to believe that our President has at all times acted with integrity—and certainly that he has not violated the criminal law.

Everyone in my Office therefore envies the position years ago of Paul Curran, the distinguished counsel appointed by Attorney General Griffin Bell to investigate certain financial transactions involving President Carter. Mr. Curran received complete cooperation from President Carter, found no wrongdoing, and promptly returned to private life. I would like to do the same.

Third, this investigation was unpleasant because our Office knew that some Americans, for a variety of reasons, would be opposed to our work. But we would not, could not, allow ourselves to be deterred from doing our work. As I have said, our Office was assigned a specific duty to gather the facts—and then, if appropriate, to make decisions and report the facts as quickly as we possibly could. In the end, we tried to adhere to the principle Congressman Graham discussed on October 5: 30 years from now, not 30 days from now, we want to be able to say that we did the right thing.

#### *E. The Independent Counsel*

At the end of the day, I—and no one else—was responsible for our key decisions. And my background thus warrants brief note.

I came to this job as a product of the judicial process, of the courts. I began my legal career in 1973 as a law clerk, first for Judge David Dyer on the Fifth Circuit Court of Appeals and then for 2 years for Chief Justice Warren Burger. Following my clerkships, I was in private law practice in Los Angeles and Washington, during which time I worked on all manner of litigation matters—civil, administrative, and criminal.

After William French Smith took office as Attorney General in January 1981, I served as Counselor to the Attorney General from 1981 to 1983. In that capacity, I experienced firsthand the varied and difficult judgment calls that faced the Attorney General every day—whether it was dealing with the aftermath of the attempted assassination of President Reagan or selecting a Supreme Court nominee, in that case Justice Sandra Day O’Connor. I took away from the experience an admiration that has continued to this day for the career Justice Department lawyers, prosecutors, and law enforcement officials who toil without fanfare, and for whom the guiding principles are fairness and respect for the law.

In 1983, President Reagan nominated and the Senate confirmed me to be a Judge on the United States Court of Appeals for the District of Columbia Circuit. I became a colleague on a Court with truly great Judges—from J. Skelley Wright to Antonin Scalia, from Ruth Ginsburg to Robert Bork—and tackled the important and intricate issues that came before the D.C. Circuit. The cases included issues as diverse as the constitutional right of a military serviceman to wear a yarmulke (a right I supported in vain) and the right of a newspaper, in that case *The Washington Post*, to be free under the First Amendment from the crushing threat of liability under the libel laws.

In 1989, I accepted appointment as Solicitor General of the United States. The Solicitor General is, as you know, the lawyer who represents the United States in arguments before the Supreme Court. A distinguished predecessor, Thurgood Marshall, often stated that being Solicitor General was the greatest job a lawyer could have, bar none. Justice Marshall had it right. As Solicitor General, I argued 25 cases before the Supreme Court. The arguments covered the spectrum of our law including whether flag burning is a protected right under the Constitution, whether there is a constitutional right to refuse unwanted medical treatment near the end of one’s life, and whether the Senate’s decision to convict and remove an impeached Judge is subject to judicial review. While I was Solicitor General, my overarching goal was to run an Office faithful to the law, not to political or ideological opinion. And I think the record shows that I did just that.

In 1993, I left my second tour of duty in the Justice Department and returned to private practice and teaching constitutional law. In the period before I was

named independent counsel in August 1994, I was not completely absent from public service, however. In late 1993, I was asked by the Senate Ethics Committee, chaired by Nevada's Democratic Senator Richard Bryan, to review Senator Packwood's diaries as part of the Ethics Committee's investigation.

Every person is, of course, deeply affected by his or her experiences. For my part, my experience is in the law and the courts. I am not a man of polls, public relations, or politics—which I suppose is obvious at this point. I am not experienced in political campaigns.

As a product of the law and the courts, I have come to an unyielding faith in our court system—our system of judicial review, the independence of our judges, our jury system, the integrity of the oath, the sanctity of the judicial process. The phrase on the facade of the Supreme Court “Equal Justice Under Law,” the inscription inside the Justice Department building, “the United States wins its point when justice is done its citizens in the courts,” are more than slogans. They are principles that the courts in this country apply every day. Office saw that firsthand in the trial of Governor Jim Guy Tucker, Jim McDougal, and Susan McDougal. A juror said afterwards that they fought for the defendants' liberty, but were overwhelmed by the evidence. It is our judicial process that helps make this country distinct. And my background, my instincts, my beliefs have instilled in me a deep respect for the legal process that is at the foundation of our Republic.

President Lincoln asked that “reverence for the laws . . . be proclaimed in legislative halls and enforced in courts of justice.” Mr. Chairman, my Office and I revere the law. I am proud of what we have accomplished. We were assigned a difficult job. We have done it to the very best of our abilities. We have tried to be both fair and thorough.

I thank the Committee and the American people for their attention.

Mr. HYDE. The committee will stand in recess until 1:45 p.m., and I would ask everyone to remain in the room in their seats until Judge Starr has exited the room. It will just be a few seconds. We will see you back at 1:45 p.m.

[Whereupon at 1:03 p.m. the committee recessed to reconvene at 1:45 p.m. the same day.]

Mr. HYDE. The committee will come to order. I would appreciate it if we could get the doors closed.

The Chair now recognizes minority counsel, Mr. Lowell, to question the witness for 30 minutes.

Mr. LOWELL. Thank you, Mr. Chairman.

Good afternoon, Mr. Starr.

Mr. STARR. Good afternoon, Mr. Lowell.

Mr. LOWELL. Chairman Hyde has again this morning announced his desire to conclude the inquiry by the end of this year. With that in mind, it appears that you may be the principal witness that the committee hears and that yours will most certainly be the primary evidence considered.

Given this, Mr. Starr, isn't it true that on September 25, 1998, without any request by this committee to do so, you sent the committee a letter which agreed that once questions about your conduct were raised, those questions were not incidental or tangential, but they were “appearing to bear on the substantiality and credibility of the information you provided to the House in our referral.”

Mr. STARR. Well, Mr. Lowell, the letter, and I believe I am recalling the one that you are speaking to, we have had a lot of correspondence back and forth, as you know. But the letter, if my recollection serves me, goes to the circumstances with respect to the events of the evening of January 16th, and there were certain allegations being made about the circumstances by which we approached Ms. Lewinsky, what was said and the like, and that is what we were talking about or what we were addressing in that letter, if it again is the letter you are indicating.

But may I take, I must say, gentle issue with the idea that this [indicating referral] is not the information that is before you. This is the information, and the supplemental materials and the appendices reflect the hard work of the grand jury who has evaluated the witnesses. I am the Independent Counsel. My colleagues and I have gathered the information.

But, no, a witness not in the sense of a fact witness, except to the extent, obviously, that members want to inquire into the activities of our office, and I am obviously going to try to be responsive.

Mr. LOWELL. If you look at tab 1, Mr. Starr, of the exhibit book in front of you, just so that we are clear, indeed it is the September 25th letter in which you write to the committee and state that the conduct, in this case, of how you dealt with Ms. Lewinsky, goes to the substantiality and the credibility of the evidence you sent. That is the letter; is it not?

Mr. STARR. Yes, it is.

Mr. LOWELL. With that in mind, Mr. Starr, the Members and I have a series of questions that, as you indicated, will elucidate the substantiality and the credibility of the evidence.

To begin with, in your testimony, and if you look at your testimony, it would be on pages 31 and 50, you acknowledged that you had a number of choices to make with respect to sending a referral to Congress. To quote from your morning's testimony, you stated that one of the questions you needed to decide was "what to do with the evidence." And then you said we needed to decide "how do you write a referral?"

You recall your statements with those choices, correct?

Mr. STARR. Yes.

Mr. LOWELL. With respect to the choices you made, Mr. Starr, you have to agree, I take it, that there are substantial differences between the referral that you sent to Congress on September 9, 1998, and the one that was sent by Watergate Special Prosecutor Leon Jaworski, to whom you referred, in 1974. You would not, would you?

Mr. STARR. I am not sure I understand.

Mr. LOWELL. You would agree your methodology, the procedures and the decisions that you made, differed substantially to the ones that he made 24 years ago?

Mr. STARR. Well, I understood the question. The answer is yes in that our referral—your question had a number of elements, so I want to be precise. Our referral did indeed differ, and if I may explain why.

Mr. Cox and then his successor Mr. Jaworski were dealing not in an environment controlled by a law, and the assurance I want to give this committee is that we studied the law, namely 595(c), very carefully. Mr. Cox, Mr. Jaworski never had occasion to look at 595(c) because it did not exist.

So we examined that law, we examined the background, and we went through the process that I described this morning, and we determined, for example, that with respect to some of the matters, that in my effort to provide assistance to the committee, some of the events with respect to the Whitewater investigation, we were not satisfied in December of 1997 that that information that we had at that time, standing alone, met the threshold.

That has been what has governed us, and indeed, if I could just add this, the statute was framed in terms of grounds that may constitute grounds for an impeachment. The very language that Congress used suggests to me a process of judgment, and we came to a judgment as opposed to the situation absent the statute with respect to Mr. Jaworski in 1974.

Mr. LOWELL. On that point, Mr. Starr, as I understand it, and I think in referring to the differences, this is how Mr. Jaworski's report has been characterized by Federal Judge John Sirica, who reviewed it in order to send it to Congress. Judge Sirica wrote, Mr. Jaworski's report draws no accusatory conclusions. It contains no recommendations, advice or statements that infringe on the prerogatives of the other branches of government. It renders no moral or social judgments. It is a simple and straightforward compilation of information, and it contains no objectionable features.

This is how your report has been described: It is a report that marshals and characterizes the information into an aggressive piece of legal advocacy. It is one where there are few of the factual assertions left to speak for themselves. In short, it is a document with an attitude. It is notable for its failure to acknowledge that there might be more than one way to view at least some of the evidence.

That was from the Supreme Court reporter of the New York Times, Linda Greenhouse, on September 12, 1998.

It cannot be your testimony, is it, Mr. Starr, that the 595(c) background material that you cite to this committee, which was involved in reviewing that statute that you mentioned, required you to make the accusations, conclusions, in short, have a referral with an attitude, is it?

Mr. STARR. My opinion of the statute or my reading and interpretation of the statute, Mr. Lowell, is that I am called upon to establish the reason that in the Independent Counsel's view the matters that I send before you may constitute a grounds for impeachment. That is a very serious and weighty matter, and we approached it in a very serious and weighty manner.

I have the highest regard for the late John Sirica. I served with Judge Sirica. But he was addressing, in all fairness, a totally different set of circumstances, because—and it may be we have different interpretations of the statute. But with respect to any particular reporter's evaluation or description, I stand behind this referral, and I am sure there will be questions about it.

What we tried to do in this referral was to assemble in an organized form, rather than sending you simply truckloads of unorganized information; give it coherence, and then it is your judgment. And, thus, if it is the judgment that this referral has not, in fact, stood the test of your close examination, did we get the facts wrong, then, of course, you should come to your own judgment and your own assessment.

But this reflects, just so the committee knows, the views of some of the most experienced prosecutors in the country. I stand behind it because it is mine. I stand behind each word of it. It is my ultimate judgment.

But this is a professional product, it is not the product of one single person.

Mr. LOWELL. Whether it be your judgment, Mr. Starr, or the judgments of your entire staff, one thing I think you will agree with is that it was your and your staff's decisions to include the words "premeditated," "concocted false alibis," "deceived," "pattern of obstruction," "lying under oath," "perjury," which words you will never find in the report of Leon Jaworski when he was reporting the same kind of evidence to the Congress 24 years ago. Aren't I right about that?

Mr. STARR. I don't think that—I have not reviewed all of the material that Mr. Jaworski delivered, and I am not taking issue with the fact that this document is no doubt in many respects different than the very kind of environment and legal standard under which Mr. Jaworski was operating.

But, Mr. Lowell, if I am going to—speaking through my voice—but if our office is going to inform the House of Representatives that there may be substantial grounds for an impeachment, that is so weighty, that is so serious that you need to have the benefit of our judgment and our assessment of the facts informed by our watching the witnesses, listening to the grand jury and the way the grand jury reacted to witnesses, the assessment of the grand jury, and then to give you our judgment. But obviously this body is entirely at liberty to reject this referral as not being substantial or credible. It is entirely your judgment.

One of the points I did try to make in the opening statement is, I believe, and you may disagree, that I was called upon to give you my judgment and my assessment, and I have done that. But it is the responsibility of the House of Representatives to use this [indicating referral] to the extent that it wants, to discard it, to do whatever it thinks is necessary to come to its judgment as to whether there should be any proceeding, some sort of proceeding, or not.

This is a tool. This is only a tool for you to use as you see fit. But I don't think that it is fair to criticize my office for not following a pattern that was not governed by a statute, and Mr. Jaworski is not here to tell us what he would think if he went through the same process under the statutory regime that our professional colleagues went through.

Mr. LOWELL. Let me conclude this area, because you invited it. I know Mr. Jaworski—

Mr. STARR. I am sorry. I am having a little bit of trouble hearing you.

Mr. LOWELL. I am sorry. You have raised something that I think bears some note when you were talking about Mr. Jaworski not being here, but he did leave us his words. And these are the words that Mr. Jaworski left us. I think you must have known this when you were considering what to do with your referral. In talking about his decisions, the way you have talked about your decisions, in talking about how to send material to Congress, about the grave and serious matter of Presidential wrongdoing, Mr. Jaworski wrote as follows.

Mr. BARR. Can we have counsel identify the document?

Mr. LOWELL. I am sorry, you can find this in tab 4 of the exhibits in front of you. I apologize, Mr. Barr.

Mr. STARR. Tab 4.

Mr. BARR. Thank you, Mr. Lowell.

Mr. LOWELL. Mr. Jaworski, who left us his words said, “the central key to the entire success was not accusing anyone. What we did is simply carried forward what the facts were, passed them on, not making an effort to interpret them, not making any sort of an effort to construe them or to say what we thought it showed, and let it be completely nonaccusative.”

So we don’t have Mr. Jaworski, but we do have his words, correct?

Mr. STARR. Absolutely. And if I—I am sorry, may I just comment in light of your quotation?

Mr. LOWELL. Go ahead.

Mr. STARR. We did go through an evaluative process, as I described, and while we did not have the benefit of Col. Jaworski, except that which he has left us, I do think it is important for the committee to know that in light of the sober judgment, you are free to disagree with that judgment, but it is our professional judgment that the President engaged in abuse of his authority with respect to executive privilege. We were guided by Sam Dash, who had very strong views on that, who expressed those views, and who felt that we had to use certain kinds of language that I think, Mr. Lowell, and I respect your views, you would disagree with.

Mr. LOWELL. I would like to move to an area that will, I hope, reflect to the members some of the other choices you had to make about the evidence.

As I understand your testimony this morning, after the 4 years and however many dollars you have now spent, your testimony confirms apparently that your office has not and is not sending an impeachment referral to the Congress on what has been affectionately or not so affectionately called Travelgate, nor on what has been called Filegate, and I think on page 141—

Mr. STARR. I’m sorry?

Mr. LOWELL. Page 141 of your testimony, you are not sending a referral on the original Whitewater land deal, and pointed out in some of your investigation you have now learned that former Governor Tucker actually exonerated the President on some of the questions that you had.

Mr. STARR. Yes.

Mr. LOWELL. The referral you sent then, Mr. Starr, refers apparently only to the issues about the *Paula Jones* case and the questions of the President’s conduct in dealing with that case. That is correct; is it not?

Mr. STARR. The referral itself does. We do, of course—if I may, the referral does in other respects indicate the ties that we saw to earlier phases of our investigation and why we, in fact, were choosing to assess this.

But you are quite right both with respect to the two matters you indicated, as well as the specific testimony by Governor Tucker, that those matters will, in fact, not be coming to you.

Mr. LOWELL. Mr. Starr, part of the word, the key word, in your title “Independent Counsel,” is “independent”?

Mr. STARR. Yes.

Mr. LOWELL. Part of being “independent,” I think you would agree with me, is being free of conflicts of interest that might bias your investigation, correct?

Mr. STARR. Yes.

Mr. LOWELL. And as I understand it, your testimony this morning indicated that on January 15, 1998, the Office of the Independent Counsel met with Deputy Attorney General Eric Holder to discuss your jurisdiction over the matter that has now been presented in the referral. Am I right about that?

Mr. STARR. I believe the date is correct, yes. Our contact with the Department and those initial meetings was with the Deputy Attorney General.

Mr. LOWELL. In your testimony, Mr. Starr, you stated, and I quote, on page 30 of your testimony, that you “fully informed the Deputy Attorney General about the matters under investigation.” I take it it was because they had to make a decision about jurisdiction, correct?

Mr. STARR. Yes. We were there to discuss jurisdiction.

Mr. LOWELL. The independent counsel law, as you explained to the committee on pages 29 and 30 of your testimony, indicated that at the day that you were making your presentation, the Attorney General had a choice as to whether to recommend that you conduct the investigation or to give that responsibility to someone else. Isn't that also true?

Mr. STARR. Yes.

Mr. LOWELL. In that case, I suspect that you and your office would have provided the Deputy Attorney General and the Attorney General all of the information that she and he would have needed to make that important choice; am I also correct about that?

Mr. STARR. Well, certainly that which in our judgment was relevant to the decision, by all means.

Mr. LOWELL. Mr. Starr, though, isn't it then true that, in fact, neither the Deputy Attorney General nor the Attorney General had the facts that they needed because not once in any presentation you or your office made to them about the material that you were now asking their jurisdiction over, that you did not ever mention the substantial contacts that you had already had in the *Paula Jones* case, the very subject about which you were seeking authority to investigate?

Mr. STARR. Mr. Lowell, let me address two aspects. You were asking about the jurisdiction, and then let me come to the Paula Jones contacts that I had.

We did not go to the Department, Mr. Lowell, to say we must have jurisdiction. We took to the Department an issue, because we view the Department as that entity of government to whom we look, to the Attorney General of the United States ultimately, to make jurisdictional decisions. And I was not in attendance at the meetings, but I can give you my impression or understanding, and I will make this very brief.

We made it very clear that there was—the information we had was that there was inchoate criminality, which is a fancy way of saying something is afoot. It is breaking now. It is fast-moving, and we need to bring this to your attention, and you make the deter-

mination. We think there is a jurisdictional justification for what we have done thus far, but we think there are serious jurisdictional issues.

Now, it will be the Attorney General's decision.

Now, what should the Attorney General have been informed?

Mr. LOWELL. Can I go over those with you? If you would turn to tab 5 of the book, I think you and I and the members will be able to go through the issues that we might either agree or disagree the Attorney General should have been informed about.

Mr. STARR, on that page you will see that it appears that neither you nor any of the officials in your office told the Attorney General that before you became the Independent Counsel, your law firm, Kirkland & Ellis, was actually contacted to represent Paula Jones and eventually helped her attorneys to find the lawyers she chose. That was not mentioned to the Attorney General that day or at any other time you were seeking jurisdiction or asking her about jurisdiction, was it?

Mr. STARR. Well, you are assuming that I had the benefit of all of this information.

Mr. LOWELL. Whether your law firm had been asked?

Mr. STARR. Yes, in terms of—because I certainly had had personal communications with Mr. Davis, but I would have to reconstruct what others may have done in other offices. It is a large law firm. So if I could just say what I, in fact, knew at the time that this activity was under way, the reaching out to the Attorney General when these events were first unfolding, was that I had, in fact, been contacted by, among others, Mr. Davis with respect to an amicus brief or some participation on the constitutional immunity issue in 1994, and those had been publicly reported. It was all in the public domain. I indeed debated that very issue against Lloyd Cutler and Susan Bloch.

Mr. LOWELL. I am sorry to interrupt you. The question I asked, and I am sorry to do it, was not whether you had had contacts with Mr. Davis, which had been reported at some earlier point, I asked whether you had or any of your office members told the Attorney General that your law firm that you were still a member of and getting a salary from had indeed been sought out to be Paula Jones's lawyers. I understood you to say you might not have known that.

My question is you told me that Richard Porter, your partner, did not inform you that he had been asked to consider representing Paula Jones and had, in fact, assisted her in getting the attorneys she ultimately chose. Is that what you are saying?

Mr. STARR. Well, my best recollection is no. I know Richard Porter, I have had communications with him from time to time, but in terms of a specific discussion with respect to what the law firm may be doing or may not be doing, I am not recalling that specifically, no.

Mr. LOWELL. You do recall, though, that it was a matter that you admit that on at least six occasions, you personally had had conversations with Paula Jones's attorneys over legal issues in the *Paula Jones* case.

Mr. STARR. I am not sure. I had had conversations with them, just as I had conversations with others, including them, and I think the record of these proceedings should reflect that.

If I could be permitted, my position on the constitutional immunity that the President enjoyed was very clear and was open. I was contacted before I was appointed as Independent Counsel by Bob Fiske. Bob Fiske was the Independent Counsel in Little Rock, Arkansas, and Mr. Fiske asked me whether I would be willing to consider writing an amicus brief on behalf of the Office of Independent Counsel, which, of course, he was appointed to by the Attorney General. And we had conversations, but no final decision was made, but he engaged me in discussions with respect to that. We talked about the issues and so forth.

So, Mr. Lowell, I want to make a point: It did not occur to me, that issue with respect to constitutional immunity, it just did not occur to me, and fault me for my inability to issue spot. That is what we do in the law, we try to spot issues. But I never spotted the issue that my conversations with Bob Fiske, Gil Davis, my debating Lawrence Tribe on National Public Radio had the foggiest connection with issues that were unfolding at the time. Fault my judgment, if you will, but it just, frankly, did not occur to me, as I think happens to a lot of us in life, that you just don't view that as relevant information.

And, if I may say so, especially since my position had been so well-known and including the contacts with Ms. Jones's attorneys, who reached out to me with respect to the constitutional immunity issue solely, exclusively, the only thing I would say in response to your question—

Mr. LOWELL. I am going to be cut off, Mr. Chairman, from time.

Mr. STARR. You said six conversations, and you made a very specific point, and I am not trying to interrupt you, but you made a specific point, and I think it is only fair to say I don't know whether there were six conversations. I know there were several, but they were only conversations, and it never ripened—I am talking about with Mr. Davis—and it never ripened into an arrangement, an agreement, to the best of my recollection, to do anything because of the circumstances that then occurred.

Mr. LOWELL. To use your phrase, did it not occur to you that you should tell the Attorney General, who was making a decision about whether you were an independent counsel, that your law firm, Kirkland & Ellis, in addition to being asked to be Paula Jones's attorney, was providing legal advice, free legal advice, to a conservative woman's group called the Independent Women's Forum, who were thinking about participating in the *Paula Jones* case itself? Did that not occur to you either?

Mr. STARR. Well, again, it is not whether it occurs or not. I did have discussions with I think it is called the Independent Women's Forum as to whether they would, in fact, file an amicus brief again, strictly on the constitutional issue, not taking a position on the merits.

But the President, through his very able lawyers, had raised a very important question: Does the President of the United States enjoy immunity? Everyone was talking about it, and no one was talking about it particularly quietly. It was a matter of vigorous de-

bate. And the fact that I had these discussions had all been, to the best of my knowledge, part of the public domain, that is to say, they were reported, and by virtue of that, I do think it is unfair, I really do, to suggest that someone should, when circumstances were moving so quickly, go do a Nexis search, making sure that everything is in the public domain and the like, especially under circumstances that were not only fast-moving, but it was very clear that what we were investigating were serious crimes of perjury that had nothing to do with the constitutional immunity of the President.

Mr. LOWELL. Mr. Starr, are you suggesting that when you told the Deputy Attorney General that he had to move with haste because this investigation was fast-moving, that you had no responsibility to also inform the Attorney General about these contacts that you and I are talking about which might make the Attorney General, as you pointed out, have a choice to make between giving the investigation to you or giving it to somebody whose independence, bias, and involvement in the case was not questioned?

Mr. STARR. Well, I utterly disagree, with all respect, with your premise that to be involved on an issue of civil law and constitutional law in any way suggests a predisposition more generally. I would take the position that the President of the United States does not enjoy constitutional immunity from suit regardless of who the President is. It has nothing to do with the identity of the occupant of the office. It has everything to do with what the Presidency is, and the nature of our relationship to one another as individuals and whether we are all equal under the law.

So it did not occur to—and one factual correction: You suggested in your conversations—I did not have conversations with the Deputy Attorney General. They were by others in my office who were reporting to the Deputy Attorney General on the information that was coming to us and then saying, “what is your judgment? We are looking to you for guidance, and, more than that, we are looking to you for a decision.” And these issues did not, in fact, arise.

Mr. LOWELL. Did they, to your knowledge, then, Mr. Starr, on that night where you were asking the Attorney General to make a decision whether you were the Independent Counsel she was looking for, tell them that while you were the Independent Counsel and still a member of your firm, your law firm obtained a nonpublic affidavit in the *Paula Jones* case and then sent that affidavit on to the Chicago Tribune, and that, Mr. Starr, happened while you were the Independent Counsel and a member of your firm? Wasn't that something the Attorney General should have known?

Mr. STARR. I don't know—I am not saying she should not, but these are judgment calls that one makes, and it also assumes, shall I say, a computerlike ability to recall each and every thing that has ever occurred or information that has come to you.

And so, let me say this: The fact of my involvement with the Jones matter, my personal involvement as opposed to what issues one or more members of my firm may have been involved in, I think was known publicly and thus did not occur to me as something that was appropriate or was something that I focused on. As to whether I should have focused on it, you may come to a different judgment.

Mr. LOWELL. Mr. Chairman, it appears to me that my questions, as short as I am going to try to make them, might elicit answers that are a little longer than I expected. I was hoping I would get the committee's indulgence.

Mr. HYDE. I will tell the gentleman that when your time is up, I will grant you another 30 minutes.

Mr. LOWELL. Thank you, Mr. Chairman. It is about to happen, I thought.

Mr. Starr, while we are on the subject of the *Jones* case, I think it is now, from the material you sent to Congress, pretty clear that your office did absolutely nothing to stop Linda Tripp from meeting with Paula Jones's attorneys to help them set up for the January 17 deposition of the President, and the fact is, is it not, that you had the power at that moment and the reason at that moment to forbid her from having those meetings, but your office chose not to do so. Isn't that right?

Mr. STARR. That is, I think, an unfair characterization. That is to say it is once again assuming that there was information as to communications that she may or may not have been having. We did not—to the best of my knowledge, we did not have any information that she was, in fact, communicating with the Jones attorneys, and indeed the record will show we began working almost instantly at cross-purposes with the Jones attorneys in order to protect this investigation. And we actually told Ms. Tripp when it became obvious that she was talking to someone in New York, who apparently in turn was talking to someone at Newsweek, that she did have to protect the confidentiality of these matters that were ongoing.

Mr. LOWELL. I would like to get to the date, though, and see if you and I can agree that there was a moment that you had not only the motive, but you also had the ability to stop her from doing what we now learned she has done. You went to see the Deputy Attorney General on January 15. Prior to that, on an occasion or two, your officials in your office had met with her, and when you went to see the Deputy Attorney General, it is true, is it not, that one of the things that you told him, or your office told him, was that this was likely to start getting leaked; that there was a reporter that was onto this investigation and he needed to move quickly; isn't that a fact?

Mr. STARR. Yes. We made—it is my understanding that we made the Deputy Attorney General aware that there was a reporter from Newsweek. We had not known about that initially when the information first came to us, but it became very quickly apparent that there was, in fact, a Newsweek reporter who was on the story, unbeknownst to us. So, yes, we said to the Deputy Attorney General, this is another factor, this is another consideration, and I believe—I don't know, but I believe that that was brought to the Attorney General's attention.

Mr. LOWELL. So you knew that there were press people onto the investigation, and at the same time you also knew that Linda Tripp had illegally obtained information that she needed some form of immunity for, and, in fact, in your meeting with her, your officials said to her, we will give you immunity for giving us that illegally-obtained information. That happened, too, before you met the Attorney General, right?

Mr. STARR. Well, with respect to Federal offenses, we were aware that there might be an issue under Maryland law, but obviously we could not confer immunity that she might have with respect to State law. And what we did know is that this was a witness who told us a very important fact. She said, I was a witness in the Whitewater—excuse me, the White House Travel Office investigation, and I have additional information that I did not give you, and she was being asked, Mr. Lowell, to commit perjury.

And so, yes, we moved very quickly, and there was a very important reason for moving very quickly to bring it to the Attorney General's attention through the Deputy, which was that a witness who was involved in one of our ongoing investigations was being asked to perjure herself and otherwise participate in unlawful activity.

Mr. LOWELL. If I could put these steps together, Linda Tripp came to your office with information, that is a correct fact; you were worried that there was somebody talking to the press that required the Attorney General to act quickly, that is a fact; you knew that Linda Tripp had obtained information, including the very tapes that provided the evidence that you sought to get permission to investigate from the Attorney General, and you didn't put those three things together to say to her, and, by the way, we are worried about the press? You were worried enough about it to ask the Deputy Attorney General to move quick. You are saying you didn't tell Linda Tripp not to be talking about that stuff to anybody?

Mr. STARR. No, I think that is an unfair characterization. We did, in fact, promptly tell her—and events were moving very quickly—within a short time when it became evident to us, because things are not immediately evident when matters are first developing, and so you have to assess the facts. So, when it did become evident we instructed her. It is my understanding that my colleagues who were dealing with her, who were experienced, career prosecutors, made it very clear that she should stop communicating with someone who we felt was, in fact, or at least potentially was, a source for Newsweek. And indeed it is my understanding that the witness in question proceeded to change her phone number so that she could, in fact, carry out our desire, our instruction, which was—and we had no interest, Mr. Lowell, we had no interest in this matter being made public. We had no interest whatsoever in doing anything other than our duties as honorable prosecutors to bring information to the Attorney General, let her assess it, and let her make her judgment as to whether it should be investigated, and, if so, by whom.

Now, you can say, you should have told her X, Y and Z, and I would say that is Monday-morning quarterbacking.

Mr. LOWELL. It is not exactly Monday-morning quarterback, Mr. Starr. If you will turn to tab 16, you will see the agreement that you actually engaged Ms. Lewinsky herself in when you decided to give her immunity, as your officials had already indicated to Linda Tripp on January 12th that she would be getting immunity for her taping, and you will notice in tab 16 that it wasn't Monday-morning quarterbacking for you and your officials to give Monica Lewinsky not only immunity, but to make a condition of her immunity that she not talk to witnesses, that she not disclose information, and, in fact, that she not do the things that you now know

Linda Tripp did. Why didn't you put the same restriction on Linda Tripp?

Mr. STARR. What you see is the result of a very careful discussion, negotiation, with very able lawyers. This was not done—the immunity agreement that you have before you was not prepared under exigent circumstances with things moving so quickly. We did have to move quickly, in our judgment, with the information that came to us from Ms. Tripp.

So one handles different situations in a variety of ways. But I relied on my professional prosecutors to come to a judgment about what should, in fact, be done and how it should be done, and to—in fact, when it became, as I say, evident that there was an issue, I think they brought it promptly to the Deputy Attorney General's attention and also sought to take what they viewed at the time—these are judgment calls—

Mr. LOWELL. You are not suggesting to the committee that while it might have taken a lot of time to negotiate the actual clauses of an immunity agreement with Ms. Tripp, that on the day that she said she was in trouble and asked for immunity, your people could have not said to her, well, if these tapes are illegal, don't give them to anybody, don't talk to anybody about them, keep them to yourself. You didn't need an immunity agreement to tell her that?

Mr. STARR. Well, I think that is right, because one of the things—and I should clarify that what we entered into with Ms. Lewinsky, and I think this does need to be clear, was a transactional immunity agreement. She was going to enjoy immunity from prosecution. What we were giving Ms. Tripp at the time was something that was much more limited, an act of production kind of immunity. At least that is my understanding, that we were at that point in our discussions with her, simply saying give us the information, because she had come to us with very serious allegations, and—we didn't ask her to come in, she came in, she comes in, she provides this very serious information that raised potentially very serious offenses, and we wanted, in fact, to gather information as quickly as we could that would either corroborate or disprove the truth of that.

So the decision that was being made initially was what we call act of production immunity.

Mr. LOWELL. I am understanding you. I am also understanding you to say you are not contesting on the day she came in, you had the conversation, she showed you the tapes or told you about the tapes, you did have the authority to give her immunity and the authority to tell her not to talk. You did the first. You didn't do the second, did you?

Mr. STARR. Well, I would have to double-check to see exactly what we did tell her, but, no, what I am trying to make as clear as I possibly can is what we were saying to Ms. Tripp, you have given us this remarkable information, allegations. They are extraordinarily explosive, they perhaps go to the President of the United States. We need backup. And she was coming to us as a witness, and this information was not, at the time that it was first coming to us, in the public domain.

So we took the steps that we thought—my colleagues who were making these decisions on the spot took the steps that we did. But

if the suggestion is that we wanted her to go public, the suggestion is absolutely wrong.

Mr. LOWELL. I think you misunderstand my question. I could well understand why people in Linda Tripp's position and your staff working with her didn't want the investigation to become public. But I can also understand why Linda Tripp wanted the information she had to go into the Paula Jones camp, and I can understand that you had the authority to stop that, but didn't do it.

Mr. STARR. But what we did do, Mr. Lowell, in fairness, and this isn't the glass is half full versus half empty, what we did once it became clear that there was a following by the Jones lawyers of our investigation and the subpoenaing of witnesses in our investigation, we took prompt remedial action. We went to Judge Susan Webber Wright and we said, stop it. Please have them stop it. And that is extraordinarily important, because that is what action we took deliberatively as opposed to under the exigencies of the time.

Mr. LOWELL. Under the exigencies of the time, one last question. You are not suggesting that you and your staff that were talking to Linda Tripp and then going to see the Deputy Attorney General were not aware that on that following Saturday, January 17th, the President of the United States was already noticed for his deposition? You are not telling us that, are you?

Mr. STARR. No, we did know that, and indeed the Deputy Attorney General and then the Attorney General of the United States, Mr. Lowell, knew that there were serious allegations. This was days—several days—before the deposition. The deposition was on Saturday, the 17th. The Attorney General made her decision knowing the information that we had, and we were transparent. We shared the information, Mr. Lowell, that we had fully with the Justice Department.

Our concern—

Mr. LOWELL. The information you had about what Linda Tripp gave you, not the information that you had about the Kirkland & Ellis involvement.

Mr. STARR. Yes, I am sorry. The information that had come to us with respect to the investigation we shared fully with senior career prosecutors at the Justice Department operating under the direction of the Deputy Attorney General, and she then, the Attorney General, made her decision that the matter should, in fact, be investigated. So that was the first judgment; and secondly, that the Department of Justice did not want to do it.

Mr. LOWELL. Let me turn our attention to some of the other aspects of gathering evidence, because I know many people will have additional questions.

I know you don't disagree that independent counsels, although not in the Department of Justice, are required under the rules and under the law to follow the law that applies to Federal Justice Department officials, prosecutors and investigators. I know you have said as much in your speeches, that you are bound by the same rules with very few exceptions, correct?

Mr. STARR. The statute speaks specifically to the question of the applicability of DOJ policies and practices and says to the fullest extent practicable.

Mr. LOWELL. This morning you told the committee that, and this is on 49 and 50 of your own testimony, we have made every effort to follow the Department of Justice practice and policies, to utilize time-honored law enforcement techniques, and even on occasion that you and your staff, to use your phrase, would repair to the U.S. Attorney's manual for guidance. You stated that this morning.

Mr. STARR. I did.

Mr. LOWELL. With these statements in mind, I would like to turn to the issue of your involvement with Monica Lewinsky on the first occasion that you had that meeting, because so much of the evidence that the Congress has received comes from that first incident.

It is true, I take it, Mr. Starr, that when press accounts of your interaction with Monica Lewinsky first arose, you made a statement to the press on January 23, 1998, responding to those allegations, and you can find that statement to confirm its date on tab 20.

Mr. STARR. Tab 20.

Mr. LOWELL. Do you see that?

Mr. STARR. I do.

Mr. LOWELL. You made that statement on January 23rd; isn't that a fact?

Mr. STARR. Yes, I believe that is correct. This is dated January 24th, but I think it would have been the preceding day.

Mr. LOWELL. Mr. Starr, in your testimony this morning you talked about the President's ability to provide misinformation, and you also said that one of the concerns of your office was that the President and his lawyers, on page 52 of your testimony, didn't give a "distorted picture" of the facts.

With your own quotes in mind, I would like to ask, don't you think your statement to the press, to the Congress and to the American people gave a very "distorted picture" of the facts of the night and the day that you first confronted Monica Lewinsky?

Mr. STARR. Well, I think not, and we can obviously discuss it.

Mr. LOWELL. Let's do that line by line, because it will be short, but I think it will be elucidative.

If you look at the first line of your press statement, it states, "Monica Lewinsky consented to meet with several FBI agents." Do you see your statement?

Mr. STARR. Yes, I do.

Mr. LOWELL. In Monica Lewinsky's sworn testimony, which, if you like, you can follow in tab 21 to compare it back and forth, she testified under oath that she was there to have lunch with Linda Tripp. She was then accosted by agents who flashed their badges at her. She asked to see her attorney. She was told that was not such a good idea. She was then asked to go upstairs to discuss how much trouble she was in, and then she reluctantly went upstairs to meet with your staff.

Do you think your statement that Monica Lewinsky consented to meet with several agents doesn't distort the picture of what really happened that day?

Mr. STARR. Well, I think it was consensual. That is, we made it clear that she was not under arrest and that she was, in fact, at liberty to make a decision as to what she wanted to do.

Mr. LOWELL. If you look at the second line of your press statement, you said, "during the five hours while awaiting her mother's arrival, Ms. Lewinsky drank juice and coffee, ate dinner at a restaurant, strolled around the Pentagon City Mall and watched television." Do you remember making that statement to the press?

Mr. STARR. Yes, I do.

Mr. LOWELL. But your statement to the press, Mr. Starr, doesn't include the fact that Ms. Lewinsky swore to that she was scared and crying a lot of the time. When she asked to see her attorney, "she would not be able to help herself with her attorney there," she was told. She was threatened to going to jail for "27 years"; that she was not there for the 5 hours that your press statement says, but was there for over 10 hours; and that when she asked to call her mother to discuss what you were discussing with her, your deputy Jackie Bennett said, "You are 24. You are smart. You are old enough. You don't need to call your mommy."

That wasn't in your statement to the press that day, was it?

Mr. STARR. No, it wasn't, Mr. Lowell, and let me explain what press statements are designed to do. This was not designed to provide a verbatim transcript of commentary. They are designed to respond to what we were, in fact, being accused of or charged with. And what we were being accused of and charged with was improper conduct with a witness.

Now, the facts of the matter are these: We did, in fact, use a traditional technique that law enforcement always uses. We were waiting patiently for her mother to arrive. She chose not to make a decision before her mother arrived. And at the conclusion of her time with us, she had established a legal relationship which we fully recognized and always honored, and she and her mother indicated—I was not there, but I am told they indicated their appreciation for the way in which she was being treated.

Now, this press statement was in response—this was in response, Mr. Lowell, to allegations that she was being subjected to the kinds of conditions that would overbear the will. We then—and the purpose of this was to say, here is, in fact, material that the public should, in fact, know, and all of this is absolutely true.

Mr. LOWELL. When you say the public should have known that, and you state in your press statement that "she was repeatedly told she was free to leave," and that she did so several times, do you not think it would have not been a less "distorted picture," to use your words, to know when she left the room she was followed by agents, and that she swore under oath that she "felt threatened that when she left, she would be arrested"? Don't you think that completes the picture a little bit?

Mr. STARR. I think her perception was incorrect. We made it clear to the witness that she was, in fact, free to leave. The Ritz Carlton, shall I say, is a fairly comfortable and commodious place. We will show you, I am sure you have them, telephone records that indicate she reached out to Mr. Carter, her attorney, in a totally different matter. She called her mother. She, in fact, went for a walk. She had—she went to a restaurant and the like, and all these were important, because, Mr. Lowell, what the office was being accused of was somehow overbearing her will.

And she didn't need to make a decision, because here is the other side of the picture. She was encouraging others to join her in committing perjury. She was, as the information came to us, a felon in the middle of committing another felony.

Mr. LOWELL. She wasn't likely, after being brought up to your room for 10 hours, to be committing any felonies anymore after that, was she? You said you needed to do this because she was in the middle of committing a felony. You don't think she was going to leave the hotel room, go back and continue to do that which you brought her to the hotel room to do? You can't be meaning that?

Mr. STARR. Of course, we did not know; we had no way of knowing what she was going to do. What we did do was this: We had a consensual recording. We shared the results of that consensual recording with the Justice Department. We informed the Justice Department of what our intention was at the Ritz Carlton. We then proceeded in a very professional way. And then we were being met, as is not atypically the case, with charges of improper conduct.

We then said we should respond to that, especially when—and this doesn't speak to that either—we were going to the conditions of confinement as opposed to whether we had communicated with the Justice Department. There was nothing in here about the Justice Department knowing that we were going to go, have exactly this kind of encounter to ask this individual, "Are you willing to help us?" We viewed her as culpable. But in discussions with the Justice Department, the culpability, we thought, might be outweighed by the culpability of others.

Mr. LOWELL. As you have delivered to this committee the principal evidence that the committee is going to get, and as you have agreed with me that the choices you have made bear on the substantiality and credibility, my questions were trying to go to whether or not when you make statements, when you provide information, you provide the complete picture, not just whether Ms. Lewinsky was about to commit a crime. But I think you and I have established some of the facts that I want the committee to understand.

One last point about your statement. Your statement to the press, as you alluded, indicated that when she was done with this ordeal—I am sorry, when she was done, she told the agents, and I think you said "they thanked the FBI agents and attorneys for their courtesy," but you didn't put in that, and you didn't put in your referral that she thanked them for their courtesy after, quote, "They told me they were planning to prosecute my mother for the things that she had said she did." You didn't include the notion in your report to the press or even in the material in the referral that is later in the transcripts that part of her courtesy to her mother was threatening her prosecution, and that wasn't there either.

Mr. STARR. Mr. Lowell, the information that we had suggested that her mother may have been involved in serious activity, in serious criminal offenses. That was an issue, and she wanted to reach out to her mother to discuss the questions with her mother. We honored that. And no, I don't think that one would expect, if you are talking about the press release as opposed to the referral, that a press release, which is responding to charges by her lawyers, that when she was being held, I don't want to put words in their mouth.

But the substance of what was being conveyed by the very loquacious Mr. Ginsburg was that she was being held incommunicado. That was wrong. It was unfair to us, unfair to our agents, it was unfair to the Justice Department. But you don't see anything in the press release about the Justice Department either.

The purpose of this press release which you have identified as tab 20, and you have been kind enough to underscore it, was to respond to specific allegations, and I see you do not include the allegations to which we were responding. I think in order to fairly assess this you would have to say, what was it that the Independent Counsel's office was having to respond to? What we were responding to were allegations that were utterly unmeritorious.

Mr. LOWELL. Those allegations to start with were that you were overbearing, that she wasn't free to make a decision on her own, she was put in a position where her judgment would be questioned, and you are saying to the committee that the facts as sworn to by Ms. Lewinsky don't bear on whether or not those allegations were indeed exactly accurate?

Mr. STARR. Oh, Mr. Lowell, surely you don't think that a witness is going to say, "Thank you, law enforcement, for finding out that I am in the middle of committing a felony." Surely you are not going to say, surely you are not going to take the position that the witness should say, "Oh, I can't imagine why you are asking me any questions. I can't imagine why you are bothering me."

The reason that she was being approached, Mr. Lowell, was that she was trying to get Linda Tripp to commit perjury, and since you have inquired about this, her mother had made it clear that she was willing to help finance an operation for Linda Tripp so she could leave the jurisdiction and thereby avoid being confronted in the Jones deposition. That is what this was all about. So you are focusing on a press release as opposed to a court document.

Can I say one other thing? In fairness, in fairness, the issues with respect to our conduct that evening have been litigated. You can ask obviously all of the questions that you want, but usually, if a witness believes that he or she has been mistreated, if her rights have been violated, there is a place to go, and it is called the courthouse. And that is where these issues have been resolved, and they have been resolved favorably to us. We conducted ourselves professionally.

Mr. LOWELL. I take it sitting here today you are completely satisfied that the picture of your involvement with Ms. Lewinsky, as you stated to the American people and the effects it had on the evidence, were accurately depicted in the press statement you made, even given the full sworn testimony of Ms. Lewinsky and her mother. You are satisfied about that?

Mr. STARR. About this press statement being——

Mr. LOWELL. About——

Mr. STARR. No, no, because this was written from—and perhaps I have been inartful in my response. This was a response to specific allegations being made by her attorney. It was not based on an interview of Ms. Lewinsky. We had no basis for knowing, in terms of our talking with Ms. Lewinsky, what her perception was. We couldn't. Her lawyer declined to allow us, and we honored that, once she engaged Mr. Ginsburg. So the mission or the purpose of

this press statement was simply to be as responsive as we should be at the time.

Mr. LOWELL. Just so that the record is clear, Mr. Ginsburg is the lawyer you keep referring to. We know from the evidence that she contacted Mr. Ginsburg only after her mother arrived about however many hours later in the middle of the night, and the very first thing she said when approached by your agents in the lobby was, I want to talk to my attorney, Frank Carter. You don't mean to suggest to the committee that you and the agents and the people in your office were encouraging her to talk to her lawyer between the time that she was first accosted and the time that she got on the phone with Mr. Ginsburg. You are not making that statement, are you?

Mr. STARR. That is correct. We would not encourage someone who was involved in felonies, as we thought at the time, to in fact reach out to a lawyer, especially a lawyer who had assisted her in crafting a perjurious affidavit. Why would we possibly do that?

Mr. LOWELL. Well, one reason would be because the rules of the Department of Justice, the law of the land as decided by the Supreme Court and the Code of Federal Regulations require it.

Let me turn your attention to tab 23. On tab 23, as I understand it, Mr. Starr, one of the people that were in the room asking questions of Monica Lewinsky was a deputy of yours by the name of Michael Emmick, is that right?

Mr. STARR. That is correct.

Mr. LOWELL. Michael Emmick came from the Department of Justice, U.S. Attorney's Office in Los Angeles, California, and had had the opportunity 3 or 4 years before the Monica Lewinsky incident to give a speech or give a presentation to the Department of Justice about what the law requires, and this is what Mr. Emmick said about questioning a witness represented by counsel. He said, "It is rarely okay to contact the person, find out about representation, and ask if he is willing to talk anyway," and then Mr. Emmick went on to state, "It is never okay to continue to ask questions after the person has said he wants his attorney there."

In light of what the transcripts show happened that night to Ms. Lewinsky, it appears, does it not, Mr. Starr, that the deputy involved violated his own words in his effort to get Ms. Lewinsky that night?

Mr. STARR. No, because you are assuming something and you are, with all respect, incorrect. She was not represented for purposes of this analysis, and the reason that she wasn't, and you may disagree with this, but here is our analysis, and our belief that her rights were not violated has been upheld by the district court. Let me approach it this way. If one has a bankruptcy lawyer, one cannot—one cannot say if an FBI agent comes up to one, well, I am represented by, or the FBI agent must assume that I am represented by, or the person is represented by the bankruptcy lawyer.

The point is, there is a very clear distinction in the law, and in the rules of ethics between civil matters and criminal, and Mr. Carter was representing her in the civil matter.

Mr. LOWELL. When she—I realize up to that point she had no criminal problems, she only had civil problems which she had a lawyer for. So you're saying it is the prosecutor who tells a witness

whether or not she or he has the right to call a lawyer, based on the prosecutor's decision as to whether or not the matter is civil and criminal in the prosecutor's view of how the proceedings are going to go. Do you think that is what the law states?

Mr. STARR. Well, I think the prosecutor has to make a judgment as to whether the nature of the representation is civil or criminal so that the person does have to know whether, in fact, the party is a represented party. That is a judgment.

Now, even if you disagree with that, Mr. Lowell, let me say these two things very briefly. One, she did, in fact, call, or we sought to call Mr. Carter's office from the Ritz Carlton. That is a very important fact. She did, in fact, reach out to his office. Also, we tried to get her to reach out to legal aid so that she could have counsel. She later got, of course, Mr. Ginsburg. So the idea that she was not in fact permitted the opportunity to try to consult with counsel is incorrect.

Mr. LOWELL. Mr. Chairman, I am on my last area of questions, and I would appreciate the committee's indulgence.

Mr. HYDE. How much more time do you anticipate?

Mr. LOWELL. I know my questions take 5 or 10 minutes, the answers always take twice as long. I suspect—

Mr. HYDE. You ask such complicated questions.

Mr. LOWELL. Mr. Chairman, I have one more area to get into and I would appreciate the committee's indulgence to get there.

Mr. HYDE. Well, I will yield you 5 more minutes and see what you can do in 5, and I will ask Mr. Starr if you can be concise, although I am enjoying your answers myself.

Mr. Lowell for 5 minutes.

Mr. LOWELL. Thank you, Mr. Chairman.

In the end, Mr. Starr, you have said that these are serious matters that the committee has to consider, and that you have come here today and you presented again what you deem to be the evidence and the conclusions in your referral. I just want to, if I can, with you and with the committee's indulgence, go through the principal charges that you made in bringing this matter before the committee.

In the first matter you say that in your referral, in your testimony today that the President lied under oath on a variety of occasions having to do with the *Paula Jones* case. I noticed on pages 8 and 9 of your testimony, you spoke about Judge Webber Wright's rulings in the *Paula Jones* case. But in your testimony you did not also include, did you, that Judge Wright had ruled as to Monica Lewinsky's significance in the *Paula Jones* case, that it was quote, "not essential to the core issues in the case." She ruled indeed later on that the evidence, quote, "simply was not essential to the core issues" of whether Paula Jones was the victim of a quid pro quo sexual harassment, and she finally threw out the case on the grounds that Ms. Jones had not proven what the law requires.

I wanted just the record to be complete that when you talked about what Judge Webber Wright had ruled in your testimony, you never mentioned that on three occasions Judge Wright made rulings indicating that the significance of whatever it was between Monica Lewinsky and the President did not bear on her decision. That's a fact, isn't it?

Mr. STARR. Well, I disagree with the characterization of what she ruled, and I refer, and I will simply refer to her two opinions, including her analysis under Rule 403 under the Federal Rules of Evidence. I don't think that is a fair and accurate characterization of what she ruled. We may have a different opinion of how she adjudicated the matter.

Mr. LOWELL. And as to the issue of the false affidavit which you state was something the President was complicit in, to the extent that it was a ground for impeachment, your evidence also includes, does it not, Mr. Starr, that Ms. Lewinsky gave you a statement in which she said, quote, "neither the President nor Mr. Jordan or anyone on their behalf asked or encouraged her to lie," and you can find that in tab 35.

Mr. STARR. Tab?

Mr. LOWELL. Thirty-five.

Mr. STARR. Thirty-five, thank you.

Mr. LOWELL. You are aware that she has made the statement that way by now I assume, right?

Mr. STARR. Yes, yes.

Mr. LOWELL. You also must be aware that she also said that she offered to show her affidavit to the President, but he didn't even want to see it. You are aware that that's the testimony she has given as well, correct?

Mr. STARR. Yes.

Mr. LOWELL. You must also be aware that she explained to you that the President and she had obviously used cover stories from the beginning of their relationship long before she was ever listed as a Paula Jones witness. You are aware of that as well, aren't you?

Mr. STARR. Yes. And our referral makes that point clear.

Mr. LOWELL. As to the issue of whether or not she was given a job in some way to keep her happy, you know that the evidence that you sent Congress includes the fact that the job search for her began long before she was listed as a Paula Jones witness, correct?

Mr. STARR. Yes, absolutely. We make that clear in the referral.

Mr. LOWELL. And you are also aware that she told the President in July, months before the Paula Jones——

Mr. STARR. In July of?

Mr. LOWELL. 1997.

Mr. STARR. Yes, thank you.

Mr. LOWELL. Months before the *Paula Jones* case was an issue that she was going to look for a job in New York.

Mr. STARR. Yes, she did.

Mr. LOWELL. And you are aware as well that it was Ms. Tripp, not the President, Ms. Tripp, who suggested to Ms. Lewinsky that she bring Vernon Jordan into the process. You know the evidence says that, don't you?

Mr. STARR. I am aware of the evidence with respect to that, but yes, go right ahead. I am sorry.

Mr. LOWELL. You are aware as well that the evidence you sent Congress indicates that on that crucial issue, as others have stated and I have no doubt will state again, Ms. Lewinsky, unequivocally, even though never asked the question, stated to you that no one

ever asked her to lie, no one promised me a job for her silence. You understand that she swore to that as well?

Mr. STARR. Yes. Mr. Chairman, may I respond? I am trying to be brief, but Mr. Lowell, as you also know, at page 174 of our referral we specifically say, Ms. Lewinsky has stated that the President never explicitly told her to lie.

Mr. LOWELL. And you say explicitly. I would say that Ms. Lewinsky's statement that quote, "no one told me to lie, no one offered me a job for my silence," is not equivocal, would you?

Mr. STARR. I would say that it is utterly incomplete and grossly misleading. We tried to capture that, and I am of course staying right now with respect to the—her representation with respect to "no one told me to lie." Her entire testimony is to the effect, and I think this is a fair characterization of it, is that the cover stories were in fact going to continue, that that was the understanding. But yes, no one explicitly said, you know, "you will lie," using the L word. Rather, it was "we will continue with cover stories" which were not true.

Mr. LOWELL. I have one last question, Mr. Starr, given the limited time.

Mr. HYDE. I am going to have a surly bunch of Republicans.

Mr. LOWELL. This is my last question, Mr. Chairman.

Mr. HYDE. Go ahead, ask your last question. Please, go ahead.

Mr. FRANK. Didn't you feed them?

Mr. STARR. It was a very short lunch break.

Mr. HYDE. Did I hear Schumer here?

Mr. LOWELL. Mr. Starr, I don't have the time to get into the complete areas, but I will ask you the last question. It is the one I started with.

When you suggested to the committee that what you did, the choices you made have to be looked at to determine the substantiality and the credibility of the evidence, I want to ask you whether or not you don't now see, based on the things that we have discussed, that the manner in which you decided to write the referral as one with attitude, your contacts between you, your law firm and Paula Jones' attorneys, the questions that have been raised about whether or not you got into this case with proper jurisdiction, the way you dealt with Monica Lewinsky and the evidence that came from that, Judge Johnson's orders, which some others will talk to you about, about whether your office has been responsible for leaks, and the contradictions in the evidence between your referral and the statements you agree are in the evidence, doesn't that undermine the substantiality and credibility of the evidence on something as weighty as impeaching a President of the United States?

Mr. STARR. Mr. Lowell, nothing that you have said, and with all respect, what you have done is go into characterizations as opposed to dealing with facts. The facts are as we have found them to be, and not one of your questions suggests that the President was not involved in serious offenses that it is now your responsibility to evaluate. In terms of the letter, I believe with all due respect that you have overread the letter. I do think if there were any suggestion that we had compelled a confession from her on the evening of January 16, that would go forcefully and powerfully to whether any such statement by her should be used. But Mr. Lowell, she was

treated in such a way that she did not make a statement to the officers.

Mr. LOWELL. Thank you, Mr. Chairman.

Mr. HYDE. Thank you.

We will now move to the members' questioning, and the Chair recognizes under the 5-minute rule, and we will try to adhere to it, but again I will be liberal, but I would like you to make your questions concise.

Mr. SENSENBRENNER.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. Let me say that the clock does not run slower on this side of the table as apparently it does over on the other side.

I was struck, Mr. Chairman, that for the first hour plus, Mr. Lowell's questions completely avoided and evaded the principal charges that have been in your referral, Judge Starr, and only after his second extension in the last 5 or 6 minutes did he get to the charges that specifically allege misconduct by the President of the United States.

I would hope that during these proceedings, the rule of law is not on trial. That is something that has served our country well for over 200 years. The rule of law I think is paramount, and with the rule of law goes the notion that everybody stands before the law equally, whether they be President or pauper, whether they be powerful or poor.

So having said that, let me ask you, Judge Starr, whether you believe that there is any difference in the law of perjury and the law of making false statements to a grand jury, just because they happen to relate to sexual matters.

Mr. STARR. There is not, Mr. Sensenbrenner. As I have tried to indicate in the opening statement, as we have indicated in the referral, perjury is extraordinarily serious business. It is insidious. The courthouse cannot operate if perjury is allowed to either be excused or to be minimized. And why should we in fact go through the process of saying, there is an oath? We want you to tell—we want your honesty. That is what we ask in court. We want your honesty. And it does not matter whether the issue has to do with sexual harassment, or bankruptcy, or the criminal law. It is all dreadfully serious, and in my reading, I know that there is scholarly commentary to the opposite effect, perjury would, in fact, have been viewed as an impeachable offense at the time of the founding of the republic. And courts from that time on have taken perjury as extraordinarily serious, regardless of the kind of case.

Mr. SENSENBRENNER. Judge Starr, folks back home have come up to me and said, why don't you drop this whole impeachment thing because everybody lies about sex, and the President ought to have the opportunity to lie about sex just like everybody else.

I am concerned about the impact of that attitude if it ends up being adopted around the country, on a lot of essential protections that the law provides, particularly for women. For example, every sexual harassment suit is about sex. That is of its very nature. And much of our litigation, both civil and criminal, of domestic violence has at least some element of sex involved in it. If people can perjure themselves in court about sex, don't you think that that makes

our sexual harassment laws and our domestic violence laws less meaningful and in many cases unenforceable?

Mr. STARR. Yes. It certainly makes them, I agree fully that it would make them less meaningful, and it would certainly make it much more difficult to enforce if we did not take acts of perjury or obstruction seriously in this particular category of case.

Mr. SENSENBRENNER. I have one further question, which has been referred to before. There are some that have said that the testimony about Monica Lewinsky and the President's civil deposition in the Paula Jones case was not material as a result of an order which you obtained from Judge Wright right after the expansion of your jurisdiction into the Lewinsky matter.

Could you please describe what that order did and why you sought it and what its effect was on those allegations of perjury and false statements that you made in your referral, relative to the Jones civil deposition?

Mr. STARR. Yes. Number one, we tried to put a stop quickly, immediately to the Jones lawyers' efforts to notice depositions of witnesses in our grand jury matter. Mr. Chairman, may I just—I will make this very brief.

Mr. HYDE. Surely. There is more a restriction on the questioner than the questionee.

Mr. STARR. You may regret that, because I—

Mr. HYDE. Please.

Mr. STARR. Yes. Thank you. Thank you, Mr. Chairman. But we went to the judge and the judge—and we asked for a stay of discovery, and the judge in response to our request for a stay then went on to determine, under an analysis that I was trying to describe to Mr. Lowell's apparent irritation, rule 403, but it was the issue that Judge Wright was wrestling with, which is a weighing or balancing process, and she determined that this evidence, although possibly admissible, should be excluded because of the dangers to the criminal justice process, I mean her order should speak for itself, and I shouldn't be paraphrasing the judge's order.

The point is, she responded to our concern when we were trying to vindicate the integrity of our criminal justice investigation. But that has no—I am sorry. That was point one. Point two: that had no effect whatsoever on materiality, which was the second part of your question, because that is a legal concept that fortunately is very consistent with common sense. Materiality is measured at the time that the statement is made. It doesn't matter what eventually happens in the lawsuit.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you very much.

Mr. Starr, it is very clear under this process which many of us did not agree to that trying to question you for 5 minutes is an ambitious and hopeful undertaking that doesn't quite achieve our objectives.

Would you be willing to respond to additional questions that might be put to you in written form should time run out on us?

Mr. STARR. We are trying to be as helpful as we can, so if there are written questions, depending on the Chair's ruling, whatever the Chair determines is appropriate.

Mr. SENSENBRENNER [Presiding.] Without objection, Members may submit written questions for the record. I would like to establish a deadline for the questions and for the responses by Judge Starr so that the questions and answers may be included in the record before our authority runs out.

Mr. CONYERS. Thank you very much.

Mr. SENSENBRENNER. What deadline would the gentleman from Michigan suggest?

Mr. CONYERS. I don't have one right now, but could we agree on one very shortly? A week.

Mr. SENSENBRENNER. Okay. Without objection, questions shall be submitted in a week, which happens to be Thanksgiving, and the responses within a week. Is there objection by members of the committee? Hearing none, so ordered.

Mr. ROGAN. Mr. Chairman, reserving the right to object. If I may address the reservation? My only concern at this point is that the request as phrased by my friend from Michigan theoretically could be an invitation to an open-ended encyclopedic presentation of questions to Judge Starr that neither he nor his office will have the appropriate amount of time to respond. I am assuming that if questions are propounded to Judge Starr's office—

Mr. CONYERS. Could I allay my friend from California's problems and his reservation by saying that all I seek is a full record so that no member will be denied the answer to a question that was asked within the 5-minute rule on an inquiry on the impeachment of a President of the United States.

Mr. ROGAN. I thank my colleague for his clarification. My assumption, Mr. Chairman, is that in requesting unanimous consent, it comes with an assumption reasonableness, and if there is a problem with Judge Starr being able to answer in a timely fashion, he would be able to notify the committee and we would be able to review the questions.

Mr. SENSENBRENNER. Absolutely. And the acting Chair would request that members funnel their questions either through Chairman Hyde or Ranking Minority Member Conyers, rather than firing them off directly to Judge Starr.

Mr. CONYERS. Exactly. I thank you for the order.

Mr. BARR. Mr. Chairman, I think we should ask, for unanimous consent, what exactly are we being asked for unanimous consent on? I am not sure I understand. To allow written questions to the Independent Counsel and he has to answer them within a week?

Mr. CONYERS. A week, yes.

Mr. BARR. I object.

Mr. SENSENBRENNER. Objection is heard.

I have held your 5 minutes, so the gentleman is recognized for 5 minutes now.

Mr. CONYERS. Well, we just went through a process for which we had, I thought, agreement. What we are doing here then, ladies and gentlemen, is saying that within a 5-minute period, 16 members have 5 minutes, including Mr. Starr's response, to ask him anything that they want. I think that this is patently unworkable, and all I suggested was an additional method of communicating with Mr. Starr in writing, sir.

Mr. SENSENBRENNER. Well, if the Chair can respond to that, the Rules of the House of Representatives in these instances provide for recognition of members for 5 minutes apiece, and the Chair at the beginning of this hearing today said that members would be recognized under the 5-minute rule.

So far, there have been only two people who have spoken, Mr. Lowell who received two extensions, and yours truly, who got his questions in within 5 minutes.

Now, I don't think we want to be staying here until midnight. I would hope that the 5-minute rule which seems to have worked well for decades can be adhered to, and members can be concise.

So again, I will move the clock back to zero, and the gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. All right. It is clear to me that some Members do not want a full and open discussion with the witness, the only witness here today.

So let me just propose—no, I was going to my questions, but I will yield to you if you would like.

Ms. WATERS. No. It is just that the chairman is back, and I am not sure that he was privy to your request.

Mr. HYDE [Presiding.] Have you yielded to her? Because this is your time. Okay. That's all right. You want to submit written questions to the witness?

Mr. CONYERS. That's the only point, sir.

Mr. HYDE. Well, I have no objection, if he has no objection, but I would like them—they would be returned when we hear from the President. How's that? A simultaneous return of questions. Is that a good idea?

Mr. CONYERS. Well, I don't know if we should condition our questions to Mr. Starr on whether the President and his counsel have chosen to answer whatever questions you have with him.

Mr. NADLER. Would the gentleman yield?

Mr. CONYERS. I yield, yes.

Mr. NADLER. I would simply point out that the request for the ability to submit written questions is made on behalf of Members of the House on this side, and presumably the other side of the aisle. We have no control over whether the President testifies, it is up to him, and the two subjects are separate.

Mr. HYDE. You do see the fairness, though.

Mr. NADLER. No, I don't. I don't see the fairness, frankly.

Mr. HYDE. You don't.

Mr. NADLER. If the President testifies, it is his determination in this proceeding. The ranking minority member suggested that it would be helpful to the members of this committee in ascertaining the facts and in having a full and fair proceeding that we have the opportunity to submit written questions in addition to 5 minutes. I think that is reasonable, but it is either reasonable or not reasonable, regardless of what the President chooses to do in his own capacity.

Mr. CONYERS. Well, Mr. Nadler, I thank you very much. The chairman has made it clear that conditionally, we can send Mr. Starr questions. The other—another member on the other side has made it clear that he doesn't want any questions and answers whatever in writing. So I think the point has been made. I would

like to just go ahead and try to utilize my questions and answers within the period of time that I have.

Mr. STARR, I am concerned about the potential conflicts of interest between your public position of seeking to impeach the President and your private position representing numerous clients whose agendas are aligned directly against the President. Can you assure this committee that you will provide for our information a complete list of the clients in your distinguished law firm, or the law firm that you were a member of, that you have represented since accepting the position of Independent Counsel?

Mr. STARR. Yes.

Mr. CONYERS. Thank you very much.

Mr. CONYERS. I am particularly interested in, of course, in the matters with the Brown & Williamson Tobacco Company, General Motors, Hughes Aircraft, United Airlines, Bell Atlantic, and a number of others. But thank you so much. I can go to a second question.

The grand jury leaks. In reviewing your statements concerning this subject, we have two reports. I can ask you about them now; you didn't mention them in your reference to us.

Namely, once in the Washington Times you were quoted as having said, "The release of any investigative information by a member of this office or any other law enforcement agency would constitute a serious breach of confidentiality."

This summer it became clear that your office had spoken to reporters on background developed by a different standard telling Stephen Brill, "nothing improper about leaking if you are talking about what witnesses tell FBI agents." This to me is quite important. Is there a distinction or a compatibility with both of those statements, sir?

Mr. STARR. Yes, in this sense. I will be very brief. We have responded in detail to the article that you mentioned, and I would be happy to provide that to you. I think it is all laid out there. My position is this: we do not issue or release that kind of information. That is our position.

Now, what does the law reach? The rule of 6(e) is an issue that I am sure we will be discussing later today.

Mr. CONYERS. Yes. Well, and the 5-minute rule, we may or may not discuss it. I mean that's the problem.

Doesn't your sense of fairness in the courts extend to congressional hearings where you have 16 members with 5 minutes to ask and be answered questions? Isn't that—doesn't that strike you as somewhat constricting, somewhat limiting, somewhat hard for us to take advantage of your appearance before us as the witness of the day?

Mr. STARR. Mr. Conyers, I do not want to speak to the Rules of the House. Let me answer—may I answer 6(e), because I gather that my answers do not count against your time quite in the same way. But I will be guided by you.

Mr. CONYERS. Well, let me ask you about the Travelgate and FBI files, which you did not mention the exoneration of the President in your reference.

Why—did you include any exculpatory information in your reference, and why didn't you put it in there instead of putting it in your statement here?

Mr. STARR. We put the statement—you are right, we did not include that in the referral because of my view of what the referral was supposed to do. What I viewed this invitation as being was to try to—because I was invited, and pursuant to that invitation, we reflected on what is the information that you might need, because we had been told, Mr. Conyers, by the Congress, you know, don't hold things back. If you have information that could be relevant, provide it. And that is what we have in fact been trying to do.

Now, if there is a sense that we are providing too much information, we will be guided by that, because we are trying to be helpful.

Mr. CONYERS. Well, I thank you very much for that response.

Finally, sir, the failure to rule out pardon of Susan McDougal, is that a very strong or personally-held sentiment on your part? We had President Bush pardon 6 defendants in Iran Contra, and I was a little bit dismayed that you would deem fit to blow out of proportion the fact that the President refused to comment on the possibility of pardoning Ms. McDougal. Did I read more into that about your attitude about her than I ought to have?

Mr. STARR. No, Mr. Conyers, I think you read it fairly and accurately, and you might very well have a different view that my view is quite wrong, but our view at the time was that the President did not help the situation of our trying to get to the truth as quickly as possible by his comments. But that is your judgment. We have brought that to your attention for you to assess, and if it is your judgment that that is not an appropriate matter to consider, or your judgment is different, obviously, it is your judgment that controls and governs here.

Mr. CONYERS. Well, I am glad to know that that is the case, that I still have my judgment intact. Thank you very much.

Mr. HYDE. The gentleman's time has expired.

I might say on the 5-minute rule, that is pursuant to the Rules of the House, and the Republicans get 5 minutes just like the Democrats, so there is an equal burden. We have been extremely generous in questioning, and I don't intend to shut anybody down, but I hope the seating arrangement suits you. That's about all that hasn't been complained of today, and I just hope it's okay. We will change it if you want.

Mr. FRANK. Could we get hassocks, Mr. Chairman?

Mr. HYDE. Hassocks. Very good. I like that.

The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

Judge Starr, I am sure in light of that, you should be fully aware that Chairman Hyde keeps the time. You answer the questions as fully as you want when we ask them. We will get our bell rung, but don't worry about your bell.

Mr. STARR. Thank you.

Mr. MCCOLLUM. Let me ask you a couple of things just to follow up quickly. At any time, did you ever represent anybody in the Paula Jones sexual harassment case?

Mr. STARR. No. Well, I shouldn't be so quick. I did not ever represent Ms. Jones or even seriously contemplate anything other

than a role with respect to the constitutional immunity issue. But I believe, and I can check this but I will just give you my belief, that my firm did, in fact, represent the Independent Women's Forum.

Mr. McCOLLUM. Right. But you never personally represented anybody in the Paula Jones sexual harassment litigation, per se?

Mr. STARR. Not per se.

Mr. McCOLLUM. That's all I wanted to clarify. You engaged us very fully on the immunity issue during your complete testimony.

I have another question that is related. I heard you describe this morning a compelling picture of President Clinton, a compelling picture of him acting in a cold, calculated, methodical, well thought-out method; a scheme, if you will, to lie under oath, to commit perjury, if you will, with regard to his involvement with Ms. Lewinsky before the *Jones* case, in the *Jones* case in the deposition, and before the grand jury, to convince Monica Lewinsky and Betty Currie to also commit perjury, lie under oath in that *Jones* case; to work to get others perhaps, but certainly in concert with him, to conceal and not produce the gifts that you mentioned in a subpoena situation in the *Jones* case where they were subpoenaed of Monica Lewinsky; and to try to get Monica Lewinsky a job in at least, it appears from circumstantial evidence you described, in a compelling way, in large measure because the President wanted to keep her from turning on him, and to keep her from going ahead and telling the truth at some point.

Now, that is a picture you painted. It was very compelling.

Now, the latter part interests me. Section 201 of Title XVIII of the United States Code is the bribery section of the code and it reads in part, "Whoever directly or indirectly gives, offers or promises anything of value to any person for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing or other proceeding," et cetera.

Couldn't a reasonable person, Judge Starr, listening to what you described, particularly with regard to the job offer of the circumstantial evidence the President has of obstructing justice in that instance as you described it, couldn't a reasonable person, a reasonable member like me, conclude that there may as well as being obstruction of justice, there may be an act of bribery the President committed in this case? Could I not conclude that as well?

Mr. STARR. Well, Mr. McCollum, I would not want to join in a particular judgment beyond that which we have set forth in the referral. But you will obviously go through your analysis. I think on the other side of the equation, the circumstances when the job search began and so forth. But I have frankly not taken the specific issue you have identified, and it is a fair issue, through the kind of elements analysis that a lawyer and a prosecutor would need to do.

So I think in fairness, I would say I would just want to examine that question more closely before opining on it.

Mr. McCOLLUM. When you actually—you testified this morning, all of that went through my mind, I pulled out the statute book, I have walked through it, and while you didn't allege it and you are not here today, it seems pretty darn clear. I think that is im-

portant, because in the context of this picture you are painting of the President, you are painting perjury and bribery, as you said, of the same whole cloth. We are dealing with a similar pattern and an involvement overall that is very grave.

I would like to conclude with a question that clarifies and gets you to amplify one other thing that Mr. Sensenbrenner asked you about regarding the issue of perjury itself. In this particular case, a number of our colleagues on this panel have suggested that because the *Paula Jones* case was dismissed and ultimately settled, or because there was, indeed, a throwing out by the judge, albeit appealed, of the underlying question of whether or not there was any relevance to the testimony about other people being sexually harassed as being relevant to that case, that somehow, therefore, if the President lied in that case, it is immaterial.

Now, you started to say something about that. I don't think you really fully put the nail into this, and I would like for you to tell us, in your judgment, based upon what you presented us today, were the elements of perjury present when the President lied under oath as you have described it in that *Paula Jones* case and, particularly, was materiality present?

Mr. STARR. Materiality is not affected. It is a totally bogus argument to suggest that because the lawsuit is eventually settled or dismissed that an act, let's call it perjury, we have said, you know, a false statement under oath, that is the way we presented it to you. That is simply and utterably and demonstrably wrong as a matter of law.

Mr. HYDE. The gentleman's time has expired.

Mr. MCCOLLUM. May I just clarify one thing, Mr. Chairman?

The false statement under oath you presented and the way you described it with all of the elements there, you have described all of the elements of perjury; have you not, Judge Starr? You may have distinguished it the way you presented it, but aren't all the elements there you just described?

Mr. STARR. I am not quarreling with what you just said.

Mr. MCCOLLUM. Thank you.

Mr. HYDE. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Starr, Judge Johnson has found 24 instances of prima facie violation by your office of rule 6(e). That is not determinative of whether or not they happened, but I thought I would ask you. Are you aware of any member of your staff who, in fact, committed a violation as defined by Judge Johnson? Are you aware of in those 24 instances whether or not a member of your staff in fact was guilty of what Judge Johnson has found to be a prima facie violation?

Mr. STARR. We do not think that we have violated 6(e) at all.

Mr. FRANK. Specifically on the 24 instances, because you may differ with the report about how you define 6(e), but as she defined 6(e), are you aware of any member of your staff who committed a violation as she defined it?

Mr. STARR. Well, with all respect, I think that is an unfair question, and the reason I do—

Mr. FRANK. All right, then I will withdraw it. Mr. Starr, you are the expert on unfair questions. If you tell me it is an unfair question, I will withdraw it.

Let me ask you again, did anybody on your staff, to your knowledge, do the things which Judge Johnson has included in her list of the 24 items? Understanding that you may think that if they did, they weren't violations, but did anybody on your staff give out that information on any of those 24 instances?

Mr. STARR. There are a couple of issues or instances in which we issued a press release where we do have—you know, we clearly issued a press release with respect to certain matters. But may I say this. I am operating under a sealed litigation proceeding, and what I am trying to suggest is, I am happy to answer as fully as I can, except—

Mr. FRANK. To the extent that you can't answer under this particular proceeding, it is sealed at your request to the extent that it is sealed at all. That is, Judge Johnson granted a motion for an open procedure. You appealed to the circuit court, and they closed it up, so if you didn't object, nobody else will. If you didn't do anything, why not just tell us if it is wrong factually. On the other hand, you are going to say well, you successfully got the circuit court to seal it, so I suppose I can't do much, but I don't understand why you don't just tell us.

Mr. STARR. Let me make very briefly these points. We believe that we have completely complied with our obligations.

Mr. FRANK. That wasn't my questions.

Mr. STARR. Under 6(e).

Mr. FRANK. My question is, Judge Johnson set it forward, and they did this. They could differ as to the law. I am not debating the law, I am trying to elicit a factual response.

Mr. STARR. The second point that I was trying to make is that I am operating under a sealed proceeding.

Mr. FRANK. Sealed at your request, correct?

Mr. STARR. No, Mr. Frank. It is sealed by the Chief Judge based upon her determination of—

Mr. FRANK. She granted a much more open proceeding and you appealed that and got a circuit court to severely restrict the procedure on the grounds that hers was too open. Isn't that true?

Mr. STARR. Congressman Frank, what she did was to provide for a procedure that didn't provide quote, "openness," it provided for an adversarial process, and this is all in the public domain. But from this point forward, no, she is the custodian and the guide with respect—

Mr. FRANK. Would you ask her to release that? I think this is severe for public interest in dealing with this leak question. It goes to the credibility of a lot of what you have done. Would you then join, maybe everybody would join, maybe the White House would join, and others, in asking Judge Johnson to relax that so we could get the answers publicly, because I think there is a lot of public interest, legitimate interest in this.

Mr. STARR. I am happy to consider that, but I am not going to make, with all respect, a legal judgment right on the spot with respect to appropriateness—

Mr. FRANK. Well, then let me—I just have a couple other questions.

You say in page 9 of the referral that 595 says, suggests that you send us information based on a referral as soon as it becomes clear

to you. That is what bothers me about the FBI file on Travel Office issues. You say on page 47 of the testimony, our investigation found no evidence that anyone hired by Mr. Livingstone or Mr. Marceca was involved. When did your investigation determine that?

Mr. STARR. Well, under 595(c)——

Mr. FRANK. Excuse me. That is a simple, factual yes, Mr. Starr. When did you determine that, that nobody hired by either Mr. Livingstone or Mr. Marceca was involved.

Mr. STARR. We determined that some months ago.

Mr. FRANK. Okay. Well before the election. You also have with regard to the Travel Office a statement that the President is not involved. When did you determine with regard to the Travel Office that the President was not involved? That is just factual, Mr. Starr. When?

Mr. STARR. It is not a date certain. We have no information with respect to——

Mr. FRANK. I will take a date ambiguous. Give me an approximate.

Mr. STARR. First of all, there is an investigation that is continuing, and as of this date of reporting, we do not have any information——

Mr. FRANK. Let me just say, here is what disturbs me greatly. You say on page 9 that yes, you should send us this information. Before the election you sent us a lot of information about the President that was to his discredit in some cases, and you found it very derogatory in other cases. You also have been studying for far longer than the Lewinsky case the FBI and the Travel Office. You tell us that months ago you concluded that no—that the President was not involved in the FBI files and you have never had the evidence you developed in the Travel Office, yet now, several weeks after the election is the first time you are saying that.

Why did you withhold that before the election when you were sending us a referral with a lot of negative stuff about the President and only now, despite your saying that the statute suggests you tell us as soon as possible, you give us this exoneration of the President several weeks after the election?

Mr. STARR. Mr. Frank, what we have tried to do is be responsive to Congress, which has said, provide us with information, and is there any other additional information that would be useful——

Mr. FRANK. Why didn't you tell us before the election about this, according to your reading of the statute?

Mr. STARR. Congressman Frank, the reason is because what we provided you in the referral is substantial and credible information of possible potential offenses. The silence with respect to anything else means necessarily that we had not concluded——

Mr. FRANK. In other words, don't have anything to say unless you have something bad to say. You concluded in the FBI file, your conclusions about the FBI involving the President, why didn't you tell us?

Mr. HYDE. The gentleman's time has expired. However, I would yield to the witness such time as you need to answer the many questions Mr. Frank has put to you.

Mr. STARR. Well, again, there is a process question. The purpose of this referral was to provide you with what we had found substantial and credible information. That is point one. And the FBI files and the Travel Office matter were not relevant to the 595(c) substantial and credible information in terms of providing this to you for you then to determine, do you want any additional information.

The final point I would say is we still have an investigation, as I indicated, underway, and with respect to both FBI files, we have indicated that, and the Travel Office. I have drawn a distinction between the two matters, but I am reporting to you so you know that as of this time we do not believe that there is any information in either of those matters, Congressman Frank, that would be relevant to you.

Mr. HYDE. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair.

Isn't it true, Judge Starr, that you did release before the election, months before the election, what amounts to the exoneration of the President with respect to the Vince Foster matter; is that correct?

Mr. STARR. Yes.

Mr. GEKAS. Months before the election. Let me ask you this: in what form did you exonerate the President? What formal step did you take in the Vince Foster matter to end that case? Did you report back to the Attorney General?

Mr. STARR. In that particular instance, we issued a report, we filed it with the Special Division, and then made the report public so that it could address what we saw as these lingering questions with respect to the cause of death. It was a suicide by Mr. Foster.

Mr. GEKAS. You felt comfortable in exonerating the President?

Mr. STARR. Oh, yes.

Mr. GEKAS. Mr. Conyers, my friend John Conyers from Michigan, went through a litany of tremendous clients that your law firm represents. In fact, when I finish my tour in Congress, I would like to talk with you. But may I ask you this: was your law firm—were you a part of that law firm that represented these clients when you exonerated the President in the Vince Foster matter?

Mr. STARR. Yes.

Mr. GEKAS. Were these clients still on the books of your firm when you came to the conclusion that there was no connection in the Filegate matter to the President?

Mr. STARR. Yes.

Mr. GEKAS. Was your law firm and you involved in these tremendous clients that were mentioned at the time that you made a decision that there is probably no connection in Travelgate directly on the President?

Mr. STARR. Yes.

Mr. GEKAS. I thought you answered that.

I am disturbed about something, though, that I found right from the first moment that I reviewed your referral, and that was the emphasis you put on with respect to the, what you would characterize as the misuse of executive privilege by the President. On page 204 of your—of this version of the referral, you make a separate allegation that the President's actions were inconsistent with his constitutional duty to faithfully execute the laws, and you put

in there that he did so, did fail in that regard because he continuously used executive privilege.

The first thing that I thought was, and I have not been disabused of it since then, is that the mere assertion by the President of a right like that, even if it objectively could be said that he knew what the result would be ultimately by the Supreme Court or appellate courts, I do not find that automatically or prima facie, or even now at this latter stage of the proceedings, to be something that the President should debated on this case. But then my mind was settled a little bit when you said in your testimony that even apart from the matters concerning executive privilege and the like, you did feel very strongly about the questions of perjury. And just like many of us, it is going to be very difficult for us to set aside that deep emotional feeling that we have about the construct of law enforcement and the judicial system in our country. I can set aside any abuses of power if they are called that with respect to the assertion of executive privilege, and I ask you now, didn't you sort of prioritize in that regard when you said, setting apart the questions of executive privilege, you too feel strongly about perjury as an element in your referral.

Mr. STARR. Yes. Congressman, I would say these things. One, we believe the issues with respect to false statements under oath and the like are very serious, and the facts are there for you to evaluate, and you are evaluating those. With respect to the abuse of power, it is a judgment call, and you have come to at least your tentative judgment, obviously, as I said, to Congressman Conyers. It is now your prerogative to come to your own considered judgment as to what is right. May I say very briefly on executive privilege, I do think that it is an abuse of a very important constitutional principle for such a special principle, executive privilege, which I strongly believe in, and I defend the concept of executive privilege, to be invoked with respect to the nonofficial activities of the President of the United States. I think it is improper. But it is your judgment that controls, and not mine.

Mr. GEKAS. I ask unanimous consent for 30 seconds.

Mr. HYDE. Without objection, much.

Mr. GEKAS. Without much objection.

But can we not come to the conclusion in evaluating the executive privilege asserted by the President that he might have felt on any one of them where he exerted it that to give him the extreme benefit of the doubt, that he felt that the office of the presidency had to be protected, even in mundane or so, they are matters which you find could be a misuse of power?

Mr. STARR. I am sure that is the view of the President, and we came to a different view, but as I say, it is now your judgment.

Mr. GEKAS. I yield back the balance of my nontime.

Mr. HYDE. I thank the gentleman.

The Chair will declare a very short recess until 5 minutes after 4 to give everyone a little stretch. And if you will please wait and let Judge Starr leave the room first, and then we will be back at 5 after 4.

[Brief recess.]

Mr. HYDE. The committee will come to order. A couple of little commentaries, if I may. When you watch a football game on Satur-

day or Sunday, you notice they have a 2-minute warning and these scheduled interruptions. Well, now congressional committees have the same situation. We have to give a 2-minute warning to the network television, and so that is why we seem to be suspended up here doing nothing. We are waiting for the appropriate time.

The Chair would like to announce we are going to finish this evening. Some of you may be wondering how long we are going to go. I have no idea, but rather than come back tomorrow, we are going to do the job today. So I plead with my fellow members, if you have to ask a question, I hope it is a burning issue with you and not something just of idle curiosity. I am looking at you, Mr. Delahunt.

Mr. DELAHUNT. I am not idle. Will we take a supper break?

Mr. HYDE. No, we won't take a supper break. We will go straight through. We will keep the jury locked up without food and water. Right? You may send out for pizza.

There will be a meeting after Judge Starr has completed his testimony. We will then have a full meeting of the committee to do some business on subpoenas. So just be advised.

Mr. FRANK. Can we have a walk around the Mall?

Mr. HYDE. If you are walking around the Mall, I would want two police officers.

It is now a—well, a mixed pleasure to ask the Senator-elect from the great State of New York and one of our very valuable members, whom we will miss, Charles Schumer, to interrogate—question our witness. Mr. Schumer, for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman. And I will miss you and this committee, not so much today, but for many of the other things that we have done together.

Today, Mr. Starr, today after nearly 5 years of investigation, we conduct today's impeachment hearing having just received boxes of new documents from your office concerning Webster Hubbell, and have just learned from the chairman that we will be voting on deposing new witnesses involving the Kathleen Willey matter.

Mr. Chairman, I would say this to all of us on this committee: Maybe we should hang a sign outside the Judiciary Committee that says, "Out to lunch, gone fishing." We were out to lunch because we are so far afield of what the American people want us to do. We have gone fishing because despite a 5-year fishing expedition, which has yielded nothing more than allegations revolving around a tawdry sex scandal, this committee is still trying to bait the hook.

What has disturbed me about the twists and turns of this investigation and these proceedings is that instead of seeking justice, too many are intent on winning the war. So when there is not enough evidence for impeachment, you bring in John Huang's name or Kathleen Willey to prop up the case. And I say to my Republican colleagues that the irony is that the harder you try to win the war, the more you lose the hearts and minds of the American people.

Now, for Mr. Starr, the OIC has basically made three allegations against the President, three types of allegations: Perjury, obstruction of justice, and abuse of power, all stemming from the President's admitted improper relationship with Monica Lewinsky.

To me, as I have said, and you have stated in your report, it is clear that the President lied when he testified before the grand

jury not to cover a crime, but to cover embarrassing personal behavior. And as I have said before, the President's actions deserve to be punished, not as a political denouement, but because what the President has done is a serious matter that cannot go unanswered.

However, it is clear to me that if this case, as it seems to be, and as it seems clear to me, is only about sex and lying about sex, that it will never be found impeachable by Congress. Nor should it be.

As I interpret the Constitution and the Federalist Papers, an interpretation that is diametrically opposed to yours, Mr. Starr, it is obvious that this does not reach the standard of high crimes and misdemeanors as set forth in the Constitution.

The innate and sound wisdom of the American people that lying about an extramarital affair should not lead to the removal of a duly-elected President from office is far more in keeping with the Founding Fathers' visions of impeachment than your legalistic arguments, Mr. Starr.

So thus, it seems to me that if the charges of abuse of power and obstruction of justice lack compelling evidence, then the vast majority of Americans and a strong majority in this House will not vote for impeachment.

So I would like to ask you a few questions on the obstruction charge—charges. I am not asking you about abuse of power because that has already been rejected out of hand by even the President's harshest critics in the Republican Party. And I am going to ask you three sets of short questions for you to answer together, and that will be the end of my questioning, so you will have the rest of the time to answer.

First, on August 20, 1998, Ms. Lewinsky testified that, "No one ever asked me to lie, and I was never promised a job for my silence." That was in response to a question by a grand juror.

Let me ask you, again, because I know Mr. Lowell asked this, but I didn't find the answer adequate, why wasn't this statement directly included in your 455-page referral to Congress, not in a footnote and not paraphrased? Isn't that relevant, trenchantly relevant information, about what we are doing? And if you are so dispassionate about simply producing the facts, why wouldn't you have included the statement verbatim and in quotes, particularly on a matter as important as impeachment?

Second, regarding the Lewinsky job search, if the President and his staff began to find Monica Lewinsky a job sometime after December 5, 1997, the date she first appeared on the witness list, that might lead one to your conclusion that there was an attempt to influence her testimony. But since the job search began more than 18 months prior, doesn't that cast into serious doubt an obstruction argument?

You are assuming that once the White House knew of the deposition of Lewinsky, their reason for getting her a job totally changed; when it seems at least as logical that the reasons remained the same, mainly that they wanted to get her away from the White House for the obvious—same reason that they did before they knew of any deposition.

And again, shouldn't we set an impeachment bar high enough so that a 50/50 proposition like this does not set off a constitutional crisis?

And third and finally, on January the 18th, the President had the conversation with Betty Currie. Isn't it true that on that date, she was not listed as a deposition or a trial witness in the *Jones* case or any other case?

For obstruction or subornation, the President would have to know that she was to be called as a witness. There is another logical reason that he didn't want Betty Currie to talk about this. He may not have wanted the press to know. He may not have wanted his family to know.

Mr. HYDE. Can you wind up, Mr. Schumer?

Mr. SCHUMER. Yes. And again, given the weighty matter of impeachment, shouldn't there be more evidence than just your surmise that the President knew that Currie would be called as a witness? It is your answers, Mr. Starr.

Mr. STARR. Senator-elect and Congressman Schumer, question one, we did supply the information. The reason that you are having, of course, these questions with respect to the referral is because we produced everything that was relevant to your assessment of Ms. Lewinsky. And I stand by what we said on page 174 of the referral. I think it is fair, in light of our assessment, but your assessment, of course, may very well be different with respect to that one item.

Mr. SCHUMER. I asked why you didn't put it in the report, in full, fully quoted?

Mr. STARR. Because we do not think that that is consistent with the truth, and it would be misleading to say, in our judgment, and I understand you may disagree with this, but we specifically said at page 174, not in a footnote, Ms. Lewinsky has stated that the President never explicitly told her to lie.

If one finds that inadequate, then one finds it inadequate. It is your judgment. But we were holding nothing back. The referral contains the information. You have also the grand jury transcripts.

I will be very brief. With respect to the December 5, 1997, matter, and again this is an assessment of facts, our professional assessment of the facts included such significant things as a great stepping up of the efforts to get her a job, especially once the witness list issued. And the referral speaks to that in fairly elaborate detail and how Mr. Jordan became very active in that effort.

Again, it is our assessment of the facts.

Mr. SCHUMER. There could be a reasonable assessment the other way, I presume?

Mr. STARR. Well, I have come to my assessment based upon my colleagues', who are professional prosecutors, assessment of the facts.

Mr. SCHUMER. Is it beyond a reasonable doubt?

Mr. STARR. By no means is that our standard, because—

Mr. SCHUMER. Thank you.

Mr. STARR. —as you quite rightly note, the question is substantial and credible.

And with respect to Betty Currie, I would simply guide the Congress again, the House again, to the substance of the President's

testimony and how she was injected into the matter by the President in his testimony, and we think that does have—

Mr. SCHUMER. With all due respect, sir, that doesn't answer my question—

Mr. STARR. I am sorry.

Mr. SCHUMER. —which is not how she was injected or what the substance was.

Please, Mr. Chairman, because he didn't answer my question directly.

But how did you come to realize that the President knew that she would be called as a witness when there was no mention of it at that time? Is this just surmise, or do you have any factual evidence that the President knew that she would be called as a witness?

We understand he wanted her not to tell the truth, but we don't know to whom. Where is your evidence?

Mr. STARR. The evidence is not that she was on a witness list. You are quite right, she was not on a witness list, and we have never said that she was. What we did say is that the transcript of the President—of the President's January 17 deposition shows that he was injecting Betty Currie into the matter and saying—may I finish?

Mr. HYDE. Sure.

Mr. STARR. And saying specifically, you will have to ask Betty. That raises—

Mr. SCHUMER. But nothing to do with the legal proceedings, sir, and that is the heart of subornation.

Mr. HYDE. All right. The gentleman's time has finally expired.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Judge Starr, you have become the bull's eye of the target upon which several aspiring political gunslingers have fired.

A recent AP story quoted a Democrat member of this Congress saying the House Judiciary Committee Republicans are looking for a way to wiggle out of this mess.

Now let me get this straight. President Clinton was involved in illicit sexual affairs in the White House with a young intern of tender years. President Clinton subsequently assured all America that he did not have an improper relationship with that woman.

President Clinton, continuing his denial, spoke untruthfully in a deposition or interrogatory and before a Federal grand jury, causing perjury to rear its ugly head. And for all this, you are the bull's eye of the target, and the House Republicans are trying to wiggle a way out of the mess.

I obviously missed class that day because as I review my material and notes, common sense and reality are conspicuously absent.

Judge Starr, if one-half of the unfavorable comments leveled at you are true, you probably should be keelhauled. I am inclined to dismiss most of them, and as evidenced by your demeanor today, I think most of that trashing was probably just that, trashing.

Now, I will admit I am not happy with the cost of this investigation, but some of that must be attributed to the President's delaying and deceptive and evasive tactics.

Let me go to page 21, Judge Starr. That is what you referred to earlier, where it says the facts suggest that the President was attempting to improperly coach Ms. Currie at a time when she was not a potential witness.

Shouldn't the word "not" be deleted there?

Mr. STARR. Yes. Thank you, Congressman. In fact, I think the corrected version, which should have come up this morning, should make it clear that she was a potential witness.

Mr. COBLE. Very well. I am sorry. That should read she was a potential witness?

Mr. STARR. Yes. And I must say, because you have been kind enough to raise that, I would just say in response to issues about potential witnesses, that Federal law is clear that these prohibitions against importuning and coaching a witness do indeed go to a potential witness.

Mr. COBLE. And I think the word "not" does appear in many of these of our scripts.

Mr. STARR. I apologize for that.

Mr. COBLE. Judge Starr, what evidence did you find to support your conclusion that President Clinton's action involved public misconduct as opposed to private misconduct, A? And B, what evidence, if any, is there that President Clinton breached the public trust?

Mr. STARR. Congressman, I will be as brief as I can. In terms of the public nature of the conduct, it seemed to me, as I sought to set out both in the referral and this morning, that the key is that this was no longer—and I respectfully disagree—but it is not my judgment that governs here—I respectfully disagree with the suggestion that this is "lying about a private sexual relationship." Rather, this is the integrity of the judicial process.

These are courts we are now talking about. These are judges, and a district judge is sitting and presiding. And that is, it seems to me, what made that dimension of it very public.

But the other aspect, which we do enumerate in counts or grounds 10 and 11 which are before you, is that, in a variety of ways, the President used the powers and influence of the Presidency to carry out this continued effort to deny and to delay, including, I believe, and this goes back to an earlier comment, when one looks at the pattern of activity that we summarize in grounds 10 and 11, one will see a course of conduct that I believe does, in fact, go to your point—both of your points.

Mr. COBLE. Chairman Hyde, it can be done in 5 minutes. The red light has not yet illuminated, and I yield back the balance of my time.

Mr. HYDE. I thank the gentleman.

The distinguished gentleman from Los Angeles, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman.

I have read the referral, and I have listened to the testimony. With one possible exception, Judge Starr has answered the 595(c) issues that I had concerns about, and I would like to reserve the balance of my time at this point.

Mr. HYDE. I am sorry?

Mr. BERMAN. I would like to reserve the balance of my time.

Mr. HYDE. You certainly may.

Well, you say he can't, but I am going to let him do it. He is a good man. We will let him do it. But I have a short memory.

The gentleman from Texas, Lamar Smith.

Mr. SMITH OF TEXAS. Thank you, Mr. Chairman.

Judge Starr, your friends know you to be a dedicated husband and father and an individual of impeccable integrity. On a professional level you have served with distinction as a U.S. circuit court judge, as Solicitor General of the United States, and as an advisor to the Senate Ethics Committee. Those qualities of personal integrity and professional respectability haven't changed, but the rules of engagement have.

As a practicing attorney, you are accustomed to legal procedures that put you on an equal footing with the other side, but as Independent Counsel you were prohibited from commenting publicly on the details of the case, even as you were unfairly savaged on a daily basis. So I understand why you welcome the opportunity today to testify and to respond to our questions, as you have done so well.

Judge Starr, during your investigation, the President claimed executive privilege to withhold information from you and prevent witnesses from testifying. While his claims were ultimately overruled by the courts, they did cause long-term delays and, in fact, as you said, obstructed your investigation.

Executive privilege only allows the President to protect national security secrets. It cannot be used to interfere with a criminal investigation. Since President Clinton and his lawyers knew the law, they also knew that their claims of executive privilege were not legal.

President Clinton's claims were thrown out by the courts, but not before they delayed your investigation by many months and perhaps over a year. Meanwhile, the White House complained that your investigation was taking too long.

In short, the President took executive privilege, which is supposed to safeguard our country's national security, and misused it to obstruct the investigation. As you said in your opening statement, this is arguably an abuse of power.

Judge Starr, my first question is this: In your referral, you said the President had a pattern of invoking and then withdrawing executive privilege to delay your investigation. Could you give us examples of this?

Mr. STARR. Yes. The President would, in fact, through his attorneys, invoke executive privilege with respect to one or more witnesses, and when we would take the issue to litigation, I will be very specific, the President invoked—or the witness, I should say, but had to do it at the direction of the President, namely Nancy Hernreich. Nancy Hernreich does not carry on, by her own admission, a policy role at the White House. She does have an important function at the White House. She manages the Oval Office operations. It is a very important function, but that is not the kind of function that the principle of executive privilege was meant to protect.

When we then, shall I say, called the lawyers on that, then it was withdrawn. That has happened to us before. It happened to us in the Arkansas phase of the litigation as well.

Moreover, as we point out, the President told the grand jury on August 17 that he had no interest in this, and I am roughly paraphrasing here, having the matter litigated. So it was as if it was to preserve the Presidency and Presidential prerogative.

The history, when one then analyzes the facts, does not support that conclusion.

Mr. SMITH OF TEXAS. Thank you, Judge Starr.

Another question: President Clinton told the American people several times that he supported the public release of the court documents he used to claim executive privilege. Is that accurate?

Mr. STARR. The answer is, partially—I would want to review the facts because I want to be fair, but there was, in fact, not, shall I say, a ready willingness to allow, for example, public access to the executive privilege hearings and so forth. So I don't want to be condemnatory, but I would say that the President did not show a strong interest in having this released quickly.

Mr. SMITH OF TEXAS. Judge Starr, a few minutes ago, counsel for the committee read an excerpt from a book written by Leon Jaworski. Let me read some other words that Leon Jaworski wrote in a book called *The Right and the Power*, which was about his experience as a special prosecutor during the Nixon impeachment proceedings.

“No government office, not even the highest office in the land, carries with it the right to ignore the law's command any more than the orders of a superior can be used by government officers to justify illegal behavior. . . . There was evidence that the President conspired with others to violate 18 United States Code, page 1623, perjury, which included the President's direct and personal efforts to encourage and facilitate the giving of misleading and false testimony by aides. . . . For the number one law enforcement officer of the country, it was, in my opinion, as demeaning an act as could be imagined.”

Do you think that passage from Leon Jaworski's book has application to the case at hand?

Mr. STARR. I do. My own view is Colonel Jaworski, were he here, would say, it is your judgment, but these matters are serious and clearly deserve to be analyzed in terms of the importance to our system of truthfulness and taking the oath of office seriously and the oath of a witness seriously. And, yes, I do think that Mr. Jaworski, were he alive today, would say, if lying to the American people is grounds for impeachment, as he thought it was, I believe, he would say lying under oath is as well. But, again, it is your judgment.

Mr. SMITH OF TEXAS. Thank you, Judge Starr.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Virginia, Mr. Boucher.

Mr. BOUCHER. Thank you very much, Mr. Chairman.

Mr. Starr, while you were not a witness to the facts which are at the base of your investigation and also your September referral to the House, I note that for a number of years you served as the Solicitor General of the United States and in that capacity represented the United States Government in a variety of cases before the U.S. Supreme Court.

I know a number of those cases, during that period, involved constitutional issues. So, in my opinion, that experience well qualifies you to answer questions on some of the broad matters of constitutional dimension that it will now be the responsibility of this committee to consider.

Since your referral was received by the House in September, there has been a great deal of discussion about the importance of the rule of law and about the importance of the principle that no individual, including the President of the United States, should be above the law.

It has also been suggested by some that the rule of law is only observed and that principle only honored if it is found that the President has committed a criminal offense while in office; that he must then be impeached and removed from office. But my readings on the Constitution suggest that impeachment was never intended to be a punishment for individual misconduct. Instead, it was intended to protect the country. It was designed to advance the public interest and to remove a Chief Executive whose conduct was so severe that it fundamentally impairs the functioning of his Presidential office.

Punishment for the individual can occur in the normal course and through the normal functioning of the criminal justice process.

So I have three questions for you. I will pose these, and then you will have the balance of the time in which to provide your answer.

First, Mr. Starr, do you believe that the President would be vulnerable to the criminal law process for whatever crimes, if any, he may have committed while in office after he leaves the office? Would he be subject to the criminal law process after he leaves the office, assuming that the statute of limitations for that particular conduct has not expired at the time that an indictment is brought?

And in answering that question, I would refer you to the provisions of Article 1, Section 3 of the Constitution, which states as follows: Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

And I would assume from that language that there would be no doubt that the President would be subjected to the normal criminal justice process once he leaves office, and I would appreciate your concurrence or, if you choose, difference with that conclusion.

Secondly, am I correct in assuming that the Federal criminal statute of limitations for the perjury and the other offenses that are stated in your September referral is 5 years, and, therefore, that the statute will not have expired by the time this President leaves office in the year 2001?

And third, if you agree that the President could be subjected to the regular process of the criminal law upon his normal departure from office in 2001, just as any other person could be subjected to that process, would you not also agree that in subjecting the President to the criminal law process, the rule of law itself would be well served? And that would also well serve the principle that no person, including the President, is above the law?

So there are three questions that I have for you.

First, is a President subject to criminal prosecution when he leaves office for offenses committed while in the office? Secondly, would there be sufficient time within the statute of limitations for prosecution of the perjury and other offenses suggested in your referral of September after the President leaves office? And third, does not that process well serve as a complete assurance that the rule of law will be fully observed?

Your answers, please.

Mr. STARR. As to question one, I agree with your reading. I think the plain language suggests exactly that, that the Framers did intend for there to be separate proceedings. And I also agree with your comment, if I could just add this, that it was not intended to be a sanction in the sense of the criminal law serving the deterrent purposes and the like that the criminal law, at its best, is designed to serve.

I also would answer yes to your second question, in terms of our—my reading, I should say, of the statute of limitations.

In terms of rule of law values, I certainly think that there is strength in the proposition that no person should be above the law, but I would also say that there is a fundamental fairness question, in my mind, charged as I am as an independent counsel, with opining in any way that could be interpreted as sort of a call as to what the appropriate disposition would be of a particular matter.

I know what my duty is. One may disagree with my reading of my duty, but it was to send you this.

And then I think in terms of fundamental fairness to all the individuals involved, one simply has to assess that after this body has done its duty and reached its judgment. But it would be, I think, wrong to answer that it would be right to vindicate the rule of law for criminal charges to be returned. I think that before we—let me be very—may I, Mr. Chairman?

Mr. HYDE. Please, go ahead.

Mr. STARR. Before we ever seek an indictment, we engage not only, and I would hope any prosecutor's office would do that, in a very careful assessment of the facts, the elements of the offense and the like. We go through each of the elements. We look at the witnesses and the documentary evidence and the like, and then we have to satisfy, following Justice Department standards, whether it is more likely than not that a fair-minded jury would convict based on these facts, with the witnesses—and we take the witnesses as we find them—beyond a reasonable doubt?

Those are judgment calls that I hope that you will excuse me, in terms of fairness, in not speaking so directly to in terms of your third question.

Mr. HYDE. The gentleman's time has expired.

The gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Judge Starr, this has been a long day, and we still have a long way to go before it is over, so I really appreciate your effort to address all of the concerns of this committee and thank you for being here.

Mr. STARR. Thank you.

Mr. GALLEGLY. I would like to speak briefly to the credibility of some of the witnesses that you interviewed during the course of the

last several months. Several key witnesses provided important testimony under oath before the grand jury. In numerous instances, their version of events conflicted with the testimony of the President.

Given your observation of the witnesses and your evaluation of the corroborating evidence, please assess the truthfulness of the witnesses, specifically Monica Lewinsky, Betty Currie and Vernon Jordan.

Mr. STARR. It is with some reluctance that I answer this because of fundamental fairness concerns, but let me say this: With respect to Ms. Lewinsky, I think she desperately does not want to hurt the President, and at the same time she has a very considerable memory, a recollection, a memory bank of relevant facts that is quite significant.

With respect to Betty Currie, as the—

Mr. HYDE. Would the witness withhold for a moment?

Those questions are tough questions. I wonder if it isn't awkward for the witness to assess.

Mr. GALLEGLY. Perhaps if Judge Starr would prefer that I visit another area.

Just as we speak, I was handed this pass-out that apparently is being handed out in the hall. There is actually no attribution, but I assume it is from our colleagues and friends on the other side of the aisle, and it references contradictory evidence as it relates to—

Mr. BARRETT. Would the gentleman yield? I don't have a copy of that, so I don't know that we have received it.

Mr. GALLEGLY. Okay. Well, I will see that we get a copy of it.

Mr. BARRETT. I have never seen that document.

Mr. GALLEGLY. I will be happy to do that. I am not going to ask specific questions relative to this document other than that there is something being handed out contradicting that the President made an attempt to hide evidence of the gifts that he may have presented to Miss Lewinsky. I ask that this be made a part of the record of the hearing.

But briefly, Judge Starr, if we could revisit the Jones deposition, the President was asked whether he had ever given any gifts to Ms. Lewinsky. Does the evidence gathered indicate that the President gave false or misleading testimony when he answered, "I don't recall"? I think that would address this handout that we are receiving.

Mr. STARR. Yes. Our assessment, and this was an assessment shared by the very experienced and career prosecutors, was that the events of December 28, 1997, must have been so clear and vivid in any reasonable person's recollection that the President would naturally have recalled that on January 17, 1998, less than 1 month later, given the nature of the events, which are undisputed, of what happened during that Oval Office visit by Ms. Lewinsky to the President over the holiday period.

So the recollection was so clear—or the events were so clear that to suggest that one doesn't recall a Rockettes' blanket and the like, the various gifts that were shared between the two, just, in our view, defied credulity, especially in light of the fact that we did have testimony, which is now before you, that the President is

blessed with one of the most powerful memories that many people who have come in contact with a wide variety of people have ever seen. So we are told the President's memory is extremely strong.

Mr. GALLEGLY. Judge Starr, would you say that it would be reasonable to say that it might be selective recall?

Mr. STARR. Well, I don't like to get into characterization, but I would simply say—I would not resist such a characterization.

Mr. GALLEGLY. Mr. Chairman, I appreciate the opportunity to participate and yield back the balance of my time. I would like this to be made a part of the record of the hearing.

Mr. HYDE. There is some objection to that. Can we discuss that?

Mr. GALLEGLY. That's fine.

Mr. HYDE. Thank you.

Mr. GALLEGLY. I would withdraw that request, Mr. Chairman.

Mr. HYDE. Thank you. The gentleman's time has expired.

PREPARED STATEMENT OF ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF CALIFORNIA

Mr. Chairman, today we have a chance to begin the important process of testing the allegations of possible impeachable offenses by President Clinton that were contained in Judge Kenneth Starr's referral to the House in September. Judge Starr comes before us this morning to give a full airing of the evidence he believes constitutes impeachable offenses by the President. All members of the Committee, the Republican and Democratic attorneys, and the White House attorneys have an opportunity to challenge and scrutinize Judge Starr's version of events and rationalization for bringing these matters before the House.

Today is an important step in the process, but it's important to note that the process will not end today. I am concerned by those who seemingly have already made up their minds as to the President's guilt or innocence, or whether any acts he may have committed rise to the level of impeachable offenses. We sit as a de facto grand jury. Our job is to hear all of the evidence, analyze all of the evidence, and then, and only then, through due deliberations should we reach our conclusions. Similar to the duty of grand jurors, if, at the end of inquiry, the facts do not support the charges, the President should be fully exonerated. On the other hand, if the facts support the allegations, we have a duty to move forward. However, either conclusion must be grounded on the facts and on the truth.

We must ensure that whatever we do will stand up to historical scrutiny, for what we do in the next few weeks is likely to be used as a model in the future. How we comport ourselves, and how we resolve the question of whether or not to impeach the President, will have implications for our political system and for our nation for many generations to come.

The issues before us are very serious. In its October 8 vote, the House directed this Committee to fully explore the allegations that the President committed perjury, witness tampering, obstruction of justice and abuse of power. Any additional information we are gathering is directly related to those core issues. If we fail to consider that information, we fail in our duty to give the evidence a full, fair and impartial hearing.

I look forward to the day when we can put this matter behind us. Until then, our Constitutional duty requires us to concentrate on the facts, not the political spin of the moment.

Thank you.

Mr. HYDE. The distinguished gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you.

Mr. Starr, we all agree on the paramount importance of the rule of law. Now, section 594 of title 28 of the U.S. Code requires an independent counsel to comply with the written or other established policies of the Department of Justice. Section 77.5 of title 28 of the Code of Federal Regulations states in relevant part, and I quote, "an attorney for the government may not communicate or

cause another to communicate with a represented party who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such party.”

And I would point out that with respect to Monica Lewinsky, her attorney was Frank Carter, who is a criminal as well as a civil attorney, who ran the public defender’s program in the District of Columbia’s criminal courts for a number of years, and the subject matter of the representation, he was the one who developed the affidavit in the Paula Jones case, which was one of the subjects that you were going to question her about, which was the subject of the investigation.

Now, these regulations are intended to ensure that a person’s right to counsel is respected. Under this policy, your office never should have contacted Monica Lewinsky directly on January 16th without the consent of her attorney Frank Carter.

I have two questions. My first question, but I will ask you to withhold until my second is asked, is why did your office violate the law and the Justice Department guidelines by contacting her directly on January 16th since your answer to Mr. Lowell’s question is obviously not correct, given what I just said about Mr. Carter’s representation in the Jones affair and his being a criminal attorney?

Second, under the Justice Department guidelines for all Federal prosecutors, it is unethical to keep criminal suspects from calling their lawyers. The evidence suggests that Lewinsky was told by your office not to contact her counsel and that your office, in fact, suggested that her immunity deal was contingent upon her not contacting him.

Here are some excerpts from Lewinsky’s grand jury testimony:

“Lewinsky: I said I wasn’t going to talk to them without my lawyer. They told me that if my lawyer was there, they wouldn’t give me as much information, and I couldn’t help myself as much. So that—

“A Juror: Did they ever tell you that you could not call Mr. Carter?

“The Witness: No. What they told me was that if I called Mr. Carter, I wouldn’t necessarily still be offered an immunity agreement.

“A Juror: Sounds as though they were actively discouraging you from talking to the attorney—to an attorney.

“The Witness: Yes.

“A Juror: Is that a fair characterization?

“Yes.

“Independent Counsel: Well, from Frank Carter—

“The Witness: From Frank Carter, who was my only attorney at that point. I didn’t have another attorney, and this was my attorney for this case so—

“A Juror: And this is the attorney who had helped you with the affidavit?

“The Witness: Yes.

“And the affidavit wasn’t even filed yet.”

The right to counsel was not a trivial issue here. Lewinsky points out in her grand jury testimony that when your office confronted

her on January 16th, her affidavit had not yet been filed in court. It was not, in fact, filed until 4 days later on January 20th.

Isn't it a fact, sir, that had you allowed Ms. Lewinsky to contact her attorney Frank Carter on January 16th, he could have withdrawn the affidavit or amended it prior to filing it in court and in that way substantially weakened any criminal case against her? And isn't it a fact that the effect and perhaps the real reason for your office telling Ms. Lewinsky not to contact her counsel on January 16th was to prevent his withdrawing or amending it—was to prevent his withdrawing or amending her affidavit and thereby substantially weakening the criminal case against her and subsequently against the President?

In other words, isn't it likely that if you had not violated the law, one of the foundation stones of all the alleged crimes in the Monica Lewinsky affair would never have occurred?

Mr. STARR. Congressman—

Mr. NADLER. That's my second question.

Mr. STARR. You did ask what I took to be several questions, but I have to disagree with the premise. I disagree strongly with the premise.

Mr. NADLER. Which premise?

Mr. STARR. We did not violate the law, and if I might explain why. And it has been litigated, if I could answer.

Mr. HYDE. Yes.

Mr. STARR. These very issues, which you have very clearly stated, have been argued in a court of law. The Chief Judge of this district has addressed these issues with respect to whether there was a denial of counsel.

Good lawyers can come up with good arguments. I don't know a single lawyer—

Mr. NADLER. Can you tell us why this was not a denial of counsel?

Mr. STARR. She concluded, based upon all the facts, that her right to counsel was not violated.

Mr. NADLER. Excuse me. Eleven hours later, after she was held for 11 hours after your people told her that if she contacted Mr. Carter, that the immunity deal would not be on the table, after your people told her incorrectly that he was not a criminal attorney, after it was made very clear that she had better not keep him, she then—

Mr. HYDE. Mr. Nadler, you had a 5-minute question.

Mr. NADLER. You don't think that was intimidation?

Mr. HYDE. Would you let him answer?

Mr. STARR. Congressman, I disagree, with all respect, with virtually every premise that informed—

Mr. NADLER. Let me ask one one-sentence question.

Mr. HYDE. No, just a moment. Now be fair. Let him answer your question, will you? You don't have time for another question.

Mr. NADLER. That's why I wanted to ask it before he answered.

Mr. HYDE. I know that's why you wanted to ask it.

Mr. STARR. Well, if I could be very brief. You stated a number of things, and, with all respect, they were virtually all incorrect. And let me begin by saying, to the extent that your concerns are, and anyone should be concerned with respect to issue of denial of

counsel, the issue has been litigated, as I was just about to say, and resolved adversely to Ms. Lewinsky.

She had very active lawyers. They knew how to make arguments. That is where we argue these things, in court. She lost, for reasons that I tried to explain in terms of my colloquy with Mr. Lowell.

But let me also say, because there has been a number—and you began, as I recall your comments, with DOJ policy. Now, Mr. Nadler, the assurance that I want to give you is that we consulted with the Justice Department about the procedure that we were going to employ prior to the time that we engaged in the procedure, and the procedure that we engaged in is what law enforcement does all the time.

As I said this morning, it is not our job to reinvent the investigative wheel. We followed traditions and traditional practices, and that is what we did in this instance. The Justice Department knew what we were going to do, and they knew specifically about the Frank Carter issue.

Mr. NADLER. They knew you were going to threaten her not to keep Frank Carter as her attorney?

Mr. STARR. I again disagree respectfully with the premise. What we—I will be very brief. What we put before Ms. Lewinsky was a choice. She had committed felonies. She was involved in the middle of committing additional felonies, and we said to her, you will be of assistance to us, or you have the potential to be of assistance to us, if you become a complete cooperating witness. Now, you have the right, and as I said earlier today in a colloquy—we, in fact, placed a phone call to—we, in fact, placed a phone call to Mr. Carter's office that evening. We scrupulously and assiduously abided by right to counsel. But we also had reservations at the time about Mr. Carter. We don't have those reservations anymore. I want the record of this proceeding to be absolutely clear. Mr. Carter was an unwitting participant in drafting a perjurious affidavit.

But, Congressman Nadler, we did not know that at the time. We knew he had been engaged by Mr. Jordan, and we were looking into and telling the Justice Department, here are the issues that we want to look into. We want to see, is there something here that may involve criminality at a very high level? And we informed the Justice Department. We abided by Justice Department practice and policy. The issue was litigated, and the Chief Judge of this district has adjudicated the matter and has determined that there was no deprivation of the right to counsel.

To me, it seems to me, that matter should be viewed as closed in terms of the legality of the process.

Mr. HYDE. The gentleman from Florida, Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman.

Mr. Starr, I want to thank you for coming today. I appreciate your testimony. As I have listened to the questions this afternoon, and as I have observed the response to your referral and the response to your investigation over the course of this year, and actually prior to this year, I have been reminded of something a lawyer said about 2,000 years ago. Giving advice to other lawyers, he said, and I paraphrase, if you don't have an argument, abuse the other side.

Lawyers today, I think, are all familiar with advice that if the facts are against you, argue the law. If the law is against you, argue the facts. And if the law and the facts are against you, just argue like the devil. And I think what we are seeing here—

Mr. HYDE. Would the gentleman yield?

Mr. CANADY. I would be glad to.

Mr. HYDE. I think the punch line on that is beat up on the lawyer.

Mr. CANADY. That's a variation on the same theme.

And I think what we are seeing here is a desperate attempt to get away from the facts of the case against the President.

Now, I understand that because I find that the facts are particularly compelling. I think your referral sets forth, in great detail, a pattern of calculated and sustained misconduct by the President of the United States, and I understand why the President's friends would instinctively react to defend him. But what is going on in attacking your investigation is not right. It is not consistent with respect for the rule of law, and I believe that the attacks that have been launched against you are without substance. They don't have merit. And even if we could accept, for the purpose of argument, that some of these attacks have some merit, it is obvious that they do not bear in any way on the reliability or the credibility of the facts of the case against the President.

Now, if someone could show me evidence of misconduct that actually went to the credibility of the evidence, if they could show me that the evidence was not reliable because of misconduct, and they could prove the misconduct, I think that would be appropriate for us to consider.

But we are not hearing that. What we are hearing here is just a grab bag, anything that occurs, to try to undermine your credibility. And, of course, this committee's process has been attacked in the same way.

Any time we come to the point of talking about the facts of the case with respect to the conduct of William Jefferson Clinton, some people cry, "Unfair." I think it is fair to talk about his conduct. I think that is what we need to focus on. I think that is our responsibility. And it would be a dereliction of our responsibility if we allowed ourselves to be diverted from that fundamental task that has been given to us by the House of Representatives in the resolution that they adopted.

So that I make by way of a general comment about what is going on. And I am struck by the concern that has been expressed about due process, and I think we should all be concerned about due process. I think that is very important. But I must ask, where is the concern for due process in a person who lies under oath in a deposition? Where is the concern for due process in a person who withholds evidence and attempts to encourage others to withhold evidence? Where is the respect for due process in someone who coaches a potential witness? Where is the concern for due process in the whole course of conduct, which you have outlined in your referral, with respect to the President of the United States?

I see a stunning lack of respect for the due process of law in the conduct of the President of the United States, as it is set forth in

your referral, and for which we seem to have no rebuttal, no significant rebuttal, offered.

I want to know if there is going to be a rebuttal offered to these facts. So far we are not hearing that, and so far in the questions that are being directed to you, the focus is not on the facts of the case. Occasionally they will touch on that. But the focus is on other things diverted to—designed to divert attention from the facts of this case.

Now, I felt compelled to say that because this is a process that needs to be on track, and all of us need to focus on the critical questions here: Did the President of the United States lie under oath in his deposition? Did the President of the United States lie to the grand jury? Did the President of the United States obstruct justice? And did the President of the United States engage in an abuse of his office in the way that you have outlined?

Now, there is not time for you to respond to that and that is not really meant as a question to you. It is meant as an observation of where this proceeding should be going and on the attempts that are being made to divert this proceeding from its proper goal.

Mr. HYDE. I thank the gentleman. His time is up.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have to first note that the witness today—Mr. Chairman, I first have to note that the witness today is the prosecutor in the case. Most prosecutors begin their presentations in court with an admonition that what they say and what defense counsel says is not evidence. Evidence will be heard from witnesses.

As Mr. Conyers has said in his opening remarks, many of us have questions involving prosecutorial misconduct, illegal leaks, conflicts of interest, questions which are relevant to our oversight responsibility of the Justice Department and independent counsel, but irrelevant to the question of shall the President be impeached, which is the issue at today's hearing. So I would hope we don't have to discuss the unfairness and absurdity of basing an impeachment of the President of the United States on a presentation from the prosecutor and a review of written statements, many of which were not under oath, and none of which were subject to cross-examination.

So the fairness of these proceedings continues to be an issue. Fairness was an issue when we didn't give the President an advanced copy of the report so his response could appear on the Internet along with the allegations. Fairness was an issue when we voted to begin the inquiry of impeachment before we had had the hearing on what constitutes an impeachable offense. Fairness was an issue when we were denied the opportunity to take depositions so we could properly prepare for today's hearings. And you can see how difficult it is to get the—use the 5 minutes effectively when you don't know what the answers are. Fairness is an issue when the scope of the inquiry was expanded one night before the evidentiary hearing. So fairness has always been an issue.

Mr. Chairman, I do want to thank you and Mr. Canady for finally convening a hearing on the history and background of impeachment so at least now we have a framework within which to review the allegations before us. That hearing was necessary be-

cause we heard from 400 historians and received a letter from 400 constitutional authorities, and another letter from 200 constitutional law professors, which warned us that not one of Mr. Starr's allegations constituted an impeachable offense.

We heard discussion today about the rule of law. At the hearing, we heard that the Constitution restricts our legal authority to impeach the President to those offenses which constitute treason, bribery, or other high crimes and misdemeanors. At the hearing, we dealt with issues such as the historic difference between impeachment of judges and impeachment of Presidents. We addressed the question of when perjury can constitute an impeachable offense and when it should not constitute an impeachable offense, and we worked to evaluate a standard for impeachment and specifically considered whether the commission of a crime which would violate the presidential oath to faithfully execute the laws, whether that could be an appropriate measure.

At our hearing, the entire first panel of witnesses, including the majority of which were invited by the Republicans, agreed that the phrase "treason, bribery or other high Crimes and Misdemeanors" does not cover all felonies, and that is that the Constitution does not give Congress the authority to remove a sitting President based on the standard that he committed a crime and therefore failed to faithfully execute the laws.

Remember, as my colleague from Virginia said, that the President will be subject to criminal prosecution after he leaves office. But they all agreed that we do not have the legal authority to remove the President based on Mr. Starr's suggestion that he failed to faithfully execute the laws.

So the rule of law restrains our impeachment authority to consideration of treason, bribery or other high crimes and misdemeanors, and therefore at the hearing, both Democrats and even many Republican witnesses, raised serious questions about our constitutional authority to use any or all of the charges as a basis for presidential impeachment.

Mr. Van Alstyne, a Republican witness, described the allegations as low crimes and misdemeanors and further said the impeachment pursuit of Mr. Clinton may well not be particularly worthwhile. When I asked the entire second panel about the Starr referral, count 11A, executive privilege, the clear consensus on the panel was that the executive privilege charge was not an impeachable offense. For example, Mr. Cooper, a Republican witness, said that I do not think that invoking executive privilege even frivolously, and I believe it was frivolous in this circumstance, but I do not believe that constitutes an impeachable offense.

So, some have said that none were impeachable offenses, but there is a clear consensus that at least some of the allegations are too flimsy to pursue. This sentiment was reflected in majority counsel's presentation last month which left out some of the allegations, the chairman's suggestion we should focus on two or three allegations, and several Republican members of this committee—

Mr. HYDE. The gentleman's time has expired.

Mr. SCOTT. May I have 30 seconds. Several members of this committee would have raised allegations that are actually worth pursuing. It is absurd to participate in fact finding when some allega-

tions may well be dropped even if they are determined to be true. That is why I joined Ranking Minority Member Conyers in a letter requesting that we call an end to the confusion and determine which, if any, of the allegations before us even, if true, might constitute an impeachable offense. Unfortunately, that request was denied and now we have the situation in which we have an open-ended, never ending committee in search of high crimes and participating in the spectacle of having the prosecutor serve as our witness.

Mr. HYDE. Are you awaiting an answer? Was that rhetorical?

Mr. SCOTT. It was rhetorical.

Mr. HYDE. Do you have anything you need to respond to that?

Mr. STARR. No, I understood Mr. Scott's dissertation.

Mr. HYDE. It was an interesting lecture.

The gentleman from South Carolina, Mr. Inglis. I wonder if you would be kind enough to yield to me very briefly.

Mr. INGLIS. Certainly, Mr. Chairman.

Mr. HYDE. I just want to sort of respond to what my friend from Virginia said. I don't characterize your office as an independent prosecutor. You are not a prosecutor, you are Independent Counsel. As a matter of fact, you have just given the President a pass on Filegate, on Travelgate, on all sorts of things, Whitewater. So as far as I am concerned, that is what an independent counsel should do, find where people are guilty, find where they are not guilty, and announce it. Let the chips fall where they may.

Insofar as judges, we impeach judges also for perjury. We impeached Judge Claiborne. I participated in that, all the way through to the Senate floor. We impeached him for perjury. We impeached Judge Nixon for perjury. When you say judges are different, they have a different standard, I direct you to the Constitution that says the President, Vice President and all civil officers, that is judges, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. I can tell you in the Judge Nixon case and in the Judge Claiborne case, it was perjury. Now, if perjury could get a Federal judge off the bench and the country can survive with a corrupt judge here and there, how much more one worries about the one man who is head of the executive department, the whole executive department, Commander-in-Chief, and all of that?

So I just think that is a response that I would like to make to the gentleman. I thank the gentleman for yielding to me.

Mr. SCOTT. I would ask the gentleman's time be restored after the 30 seconds.

Mr. HYDE. You want 30 seconds? If the gentleman doesn't mind—

Mr. SCOTT. I would ask that the full time be restored.

Mr. WATT. It never started anyway.

Mr. SCOTT. I think one of the questions we dealt with was the circumstances underlying the behavior. For example, some of the allegations, some of the people that were convicted or impeached for perjury, the perjury was lying about bribes and other serious and grievous abuses of their official powers. So I think I would like to continue the discussion, which I can't do in 30 seconds, but I

think that was the reason we had the hearing, to flesh out all of those underlying situations.

Mr. HYDE. All right. I thank Mr. Inglis. You get 5 minutes. Thank you.

Mr. INGLIS. Thank you, Mr. Chairman. Judge Starr, I have two things to thank you for, and then two things to ask you about. First of all, the two thank you's.

As I have read and actually heard some of the things that various political figures have said about you, it makes me wonder why anyone would be willing to accept an appointment like you have accepted. Really it shows I think the tremendous service that you do to the country, and I certainly appreciate the fact that you have been willing to come out of a very successful law practice, to spend time doing this.

Like you pointed out in your testimony, you would like to get back to private life. For people like you willing to serve our country in this way, it really is wonderful service, and we all should thank you. I hope that over the years, somehow all of that is forgotten, all of these things that have been said about you.

I understand people wanting to defend the President, but they need not attack the accuser. They need not attack the prosecutor, the special Independent Counsel that is appointed here. As Mr. Canady was saying, that undermines the process, it seems to me.

So first of all, thank you for your work.

Mr. STARR. Thank you.

Mr. INGLIS. Second of all, thank you for your very passionate defense of the rule of law in the last three paragraphs of your testimony. I think it is just a very eloquent statement that I hope is studied for years to come in law schools and other schools in our country, because truly it is a great and passionate statement on the importance of the rule of law.

That gives rise to my questions. We had a hearing here recently, and there is some discussion about this point, about what constitutes an impeachable offense in the context of whether there is a violation of the rule of law. It seems to me the rule of law has at least two components. One is an adherence to due process and the second is the adherence to the equal application of the law, which is something you expounded on in the last three paragraphs. I know there are some people that would say perjury is not an impeachable offense. We heard a rather erudite discussion of that a week or so ago, and a very sophisticated view that perjury is not an impeachable offense.

Let me ask you, I think we know these things about the President. We know who the President is. The question is who are we? We know that the President has admitted to lying. He admitted to lying under oath.

If he were here, I think he would say he has not technically committed the crime of perjury because it was not a material fact.

Mr. Canady I believe it was elicited some response, no, it was Mr. Gallegly, elicited some responses to you about the deposition testimony.

Let me ask you about the grand jury testimony. In your mind, were those material facts that the President was testifying to in the grand jury testimony, and are the elements of perjury met in

the referral on the point of the testimony in the grand jury situation?

Mr. STARR. Well, Congressman, again, I have been somewhat reluctant to go all the way to say in light of the purpose of the referral, to say that all elements of a crime have been satisfied. But let me say that in my own judgment, although this is a jury question, materiality the Supreme Court has held is a jury question, but I certainly think a reasonable person could very reasonably conclude that the elements were in fact present in the grand jury testimony by virtue of, as we have tried to outline in the referral, the number of statements that we believe were knowingly untrue, I think that is a reasonable conclusion to reach.

Again, our mission or our responsibility in submitting this referral was to say that there is substantial and credible information that an impeachable offense may have been committed, and that, of course, is the state of the record as it comes to you. But, yes, I do think that a reasonable juror could come to that determination.

Mr. INGLIS. Let me ask, as to the rule of law and the issue of whether perjury is an impeachable offense, I gather from your testimony, and you would restate here, that in your mind perjury is an impeachable offense?

Mr. STARR. Yes. I think with all due respect to scholarly commentary and the like, that perjury is not only an impeachable offense as a matter of theory and doctrine, and as a matter of common law—I think it is demonstrable at common law that it was viewed as a high crime or misdemeanor—but also as the chairman has indicated, the very practice. So the common law of the Congress of the United States suggests that it is in fact an impeachable offense, because judges have been removed.

The offense is the despoiling and the attack on the integrity of the judicial system. The response may be on the other side, well, we want to find out what the perjury is about and we will take some perjuries more seriously than others, and that is a view, I will say as a former judge, any judge worth his or her judicial salt would say, “Not in my court.” Witnesses tell the truth. It doesn’t matter what the underlying subject matter is. Once you are in court under oath, you tell the truth. That is the way judges look at the world, and perhaps that is why no judge being subjected to impeachment for perjury has dared suggest don’t worry about it, it is not an impeachable offense.

It is. It has been viewed that way by this very body.

Mr. HYDE. The gentleman from North Carolina, Mr. Watt.

Mr. NADLER. Mr. Chairman.

Mr. HYDE. The gentleman from New York.

Mr. NADLER. I don’t know if this is a point of order or a point of information, but I will ask the indulgence of the Chair. Mr. Chairman, a few moments ago in response to my questions Mr. Starr referred to the court’s rulings in *In re Grand Jury Proceedings* and *In re Sealed Case*, which he characterized as the judge okaying the propriety of what they had done in the subject matter we discussed.

These cases are in the possession of the committee under seal, and I would like to be able to talk publicly about them, and I would

like to be able to know publicly whether Mr. Starr correctly or incorrectly characterized this. So I would like to know, since Mr. Starr has now referred to them and characterized them, whether they are no longer under seal, and if they are still under seal I would like to move that they no longer be under seal.

Mr. HYDE. I understand they are still under seal.

Mr. NADLER. I would ask that the committee change that status.

Mr. BUYER. Object.

Mr. HYDE. Objection has been heard.

Mr. NADLER. I didn't ask for unanimous consent. I made a motion, I think.

Mr. HYDE. Well, I think it takes unanimous consent to take something out—

Mr. CANADY. I make a point of order that the motion is not in order.

Mr. HYDE. I understand. If the gentleman has something to say, I want to hear it. We will talk about it later. It is really not your turn. You are not recognized for purposes of removing things from under seal.

Mr. FRANK. Parliamentary inquiry. We are going to have a session later to vote on subpoenas. Would it be in order to make that then?

Mr. HYDE. Yes, it would.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. HYDE. The gentleman from North Carolina will not hold against me the fact that Mr. Nadler intervened. I yield to the gentleman from North Carolina.

Mr. WATT. I wanted to make a parliamentary inquiry before I start the 5 minutes. I have some questions to ask Mr. Starr about information that has been given to the committee and has not been released to the public.

If I ask questions about that, would I be in violation of the rules?

Mr. HYDE. The Parliamentarian tells me you can ask the question, but you can't refer to the material.

Mr. WATT. Okay.

Mr. HYDE. I don't know how you do that.

Mr. WATT. I will tread very lightly.

Mr. FRANK. I think it means you don't say you are referring to the material. You just ask the question.

Mr. WATT. I will tread very lightly, and if the chairman thinks I am outside the bounds, I am sure somebody will call it to my attention.

Mr. HYDE. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I would like to thank Mr. Starr for coming over. I enjoyed your speech very, very much.

Mr. STARR. Thank you.

Mr. WATT. Let me just be clear on one thing though about this. On pages 55 to 57 of your testimony, you give us information that clearly is within your personal knowledge. That is your biographical information. I was following you through the rest of this, and I think it has been implicitly said, but not explicitly said, is it correct that you don't have personal knowledge of anything that is related—I mean, you have got some opinions, you have reviewed the stuff. I respect those. But as far as personal knowledge and your

knowledge of this information as a person, I take it you would say you don't have any personal knowledge?

Mr. STARR. In the main, you are absolutely right, Congressman Watt.

Mr. WATT. Thank you.

Mr. STARR. Could I—I am sorry.

Mr. WATT. Let me go back then briefly to a point Mr. Gallegly raised, and I don't want to get into the credibility, you assessing the credibility of witnesses, because as the chairman pointed out when Mr. Gallegly tried to get you into that, that is not a place that you need to be, that is really a place for us, I take it, to assess the credibility of witnesses who know the facts.

Would you agree that the credibility of the President and Betty Currie and Monica Lewinsky would be important for us to evaluate in this committee in any respect?

Mr. STARR. Yes, Congressman Watt, it does seem to me—

Mr. WATT. Then if you agree with that, there are a couple of things that you failed to include in your referral that seem to me to bear very directly on the credibility of Ms. Lewinsky, and these are the issues that I was concerned about because they are not public yet.

Mr. STARR. I see.

Mr. WATT. One is the testimony of a woman who works as a vice president apparently at Revlon, a woman by the name of Nancy Risdon, who said to your interviewers during her statement that Ms. Lewinsky had told her that she had lunch with Hillary Clinton the previous week and that Mrs. Clinton had offered her help in finding an apartment in New York.

Are you familiar with that?

Mr. STARR. Yes.

Mr. WATT. You didn't send that information over with your referral. I take it that would have a major bearing on the credibility of Ms. Lewinsky's testimony, at least it would for me if she made that kind of representation, which I think is just completely off the reservation, so to speak.

Mr. STARR. May I respond?

Mr. WATT. I am going to give you a chance to respond. I want to ask the other one. The second occasion which you failed to give us in your referral was the interview of a woman named Kathryn Proffitt, who testified that Ms. Lewinsky had exaggerated to her the depth of her relationship, Ms. Lewinsky's relationship, with a young man at the Department of Defense. You are familiar with that, Mr. Starr?

Mr. STARR. I am not familiar with that specific item—

Mr. WATT. You take my word that it is in the information you sent over.

Mr. STARR. I am not quarreling with that.

Mr. WATT. That seems to me also would go directly to the credibility of Ms. Lewinsky as a witness. Yet neither one of those pieces of information was included with your referral. I am wondering how you went about picking and choosing the things. I mean, the chairman has referred to you as an independent counsel, not an independent prosecutor. There is some question about that. But what I am concerned about is why didn't we get the information

that we need to make the kind of credibility judgments as members of this committee, a full evaluation of credibility from your office when you made this referral?

Mr. STARR. Congressman Watt, I believe that you do have the information and we might assess the information, the relevancy of it, differently. Let me be very specific.

Ms. Lewinsky made it quite clear that she knew how to lie. She was encouraging others to lie. She also says, and this is in the referral—

Mr. WATT. So now you are impeaching your own witness now. I take it what you are doing, you have called her a liar on a couple of occasions, but a substantial portion of your case, isn't it, Mr. Starr, is based on the credibility of Ms. Lewinsky. She told you, this is the second time you have done that today, I would say, she told you under oath at the grand jury that nobody asked her to lie and nobody offered her a job in exchange for anything. You say that's a lie, you think she was lying then, so how are you picking and choosing what you believe from Ms. Lewinsky? And isn't that our job as members of this committee?

Mr. STARR. I can answer with one word: Corroboration. She is vastly corroborated with her phenomenal memory. When she would say I was with the President of the United States, she could identify a phone call coming in with a Member of Congress with a nickname, she could recall a phone call coming in from someone from Florida who was a sugar grower, and tie it to a specific date. That gives you corroboration that the event that she is giving—

Mr. WATT. What kind of corroboration would you have with a witness who says, "nobody asked me to lie?"

Mr. HYDE. The gentleman's time has expired. The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Judge Starr, thank you for appearing before the committee today. I think it is very helpful to the committee and the American people to have the opportunity to hear you respond to the questions from the other side regarding the conduct of this investigation. I agree wholeheartedly with the gentleman from Florida that they have not focused on the substance before this committee, which is whether or not the President of the United States committed offenses, including perjury, obstruction of justice, abuse of power and tampering with witnesses that may be impeachable offenses if proven to be true.

I do think it is important to let people know how this investigation was conducted. Nonetheless, I think that it is important that we return back to those issues, and I would, Mr. Chairman, ask that an excerpt from the Congressional Record in 1986 as a part of Judge Claiborne's impeachment trial in the Senate be made part of the record.

Mr. HYDE. Without objection, so ordered.

[The information follows:]

#### CLAIMS OF GOVERNMENTAL MISCONDUCT

Claiborne has urged the Senate to permit him to call several dozen witnesses ranging from prosecutors and investigators to the trial judge in his criminal proceeding. He contends that their testimony will reveal a vendetta which led to his conviction, and an unwillingness of several dozen Federal judges to expose its ille-

gality out of fear that public opinion would question whether the vendetta issue was a mere subterfuge erected to protect a fellow jurist.

Even assuming all of Claiborne's allegations of governmental misconduct to be true, the same conclusions as to his conduct obtain. No individual claim or combination of claims can or should detract from the conclusion that he willfully submitted false income tax returns in 1979 and 1980. The Senate need go no further than it already has in assessing the merits of these claims. Although Claiborne views these theories as the overarching issue in this proceeding, he is mistaken.

His contention seems to be that but for a vast conspiratorial vendetta, his innocence would have been proven or the charges would never have been brought. Claiborne contends that full consideration of his claims on this score leads to several conclusions which will exonerate him. Specifically, he suggests that Federal prosecutors pursue him so relentlessly and unscrupulously that they bargained for perjured testimony from a known criminal and spearheaded an illegal burglary of his home in search of inculpatory evidence. He claims that exculpatory evidence was withheld and that witnesses were either intimidated or unfairly coached. If accurate, these claims warrant serious scrutiny and I have cosponsored legislation to establish a special subcommittee to investigate the issue further. If the claims have merit, steps should be taken to rectify the wrong. Remedial measures, however, will in no way abrogate the finding that Claiborne engaged in impeachable conduct.

He further asserts that he could not have had the requisite willful intent, given the predisposition of Federal prosecutors; that claim rests on the notion that no one whose every move is under intense scrutiny by Federal prosecutors would willfully violate the law or knowingly submit such faulty tax returns. This assertion is untenable, given the clear findings regarding Claiborne's conduct.

Claiborne alleges that sympathy for prosecutors and fear of public criticism led several dozen Federal judges to gloss over his defenses. He points to two dissenting appellate opinions in his case suggesting that some of the members of the reviewing panel may have rendered their decision without fully examining the . . .

Mr. GOODLATTE. Thank you, Mr. Chairman. As many may recall, in 1986 Judge Claiborne, a Federal judge, was under investigation. This committee voted out articles of impeachment against him which were adopted by the full House of Representatives and he stood trial in the Senate. During that trial, he raised as a defense some very serious charges of prosecutorial misconduct, far, far more serious than anything that has been raised by folks on the other side of the aisle today, including that the prosecutor spearheaded an illegal burglary in his home, that exculpatory evidence was withheld, that witnesses were unfairly coached, and other serious charges.

During the trial of that matter, one Senator reviewing these serious matters, in fact stating that if the claims have merit, steps should be taken to rectify the wrong; also noted that remedial measures would in no way abrogate the finding that Claiborne had engaged in impeachable conduct.

The Senator who made that statement is now the Vice President of the United States, Senator Al Gore, and I think it is important to note that in a sense of bipartisanship and in a sense of seeking justice and in a sense of upholding the rule of law, that that same type of demeanor and that same type of search for the truth should lead us today.

Judge Starr, do you know what Judge Claiborne was charged with, what his impeachable conduct was?

Mr. STARR. Tax offenses is my recollection.

Mr. GOODLATTE. Actually my understanding is it was perjury and lying under oath.

Mr. HYDE. Would the gentleman yield? It was signing a false income tax return.

Mr. GOODLATTE. Lying under oath.

Mr. HYDE. Yes.

Mr. STARR. I stand corrected.

Mr. GOODLATTE. I thank the chairman. I would like to look at the obstruction of justice issue if I may, Mr. Starr. You have indicated that the evidence that you have gathered shows that the President tried to aid in obtaining a job for Ms. Lewinsky in order to prevent her from telling the truth in a judicial proceeding arising from a civil rights claim of sexual harassment in which she was the named defendant. There are those who have said, including some here today, on the other side of the aisle, that the President's efforts could be interpreted as merely helping an ex-intimate or ex-friend without concern for her testimony. I don't think you have been given the full opportunity to indicate why it is that you come to the first conclusion, rather than the second. I would like to give you that opportunity now.

Mr. STARR. Yes, thank you. The effort to provide a job for her did, as has been noted, begin early on, an effort to assist her in a possible United Nations job. But Ms. Lewinsky made it very clear that she was not interested in that U.N. job and she in fact turned it down even though Ambassador Richardson offered it to her.

She then made it quite clear that she wanted a job in the private sector. The early efforts with respect to that project did not go well. They did not go quickly in November of 1997, after she had made her decision, not to seek or not to take, I should say, the job that was offered to her by Ambassador Richardson.

After that point, the evidence suggests that there was a significant uptick in activity, specifically by Mr. Jordan, to find her a job weighing in, including with Mr. Perelman (the chairman of the board, which was quite unorthodox and unusual, according to Mr. Perelman's testimony, which is before you), one of the most wealthy and powerful people in the country.

Mr. Jordan reached out to Mr. Perelman only after it became clear as of December 5, 1997, that Ms. Lewinsky was on the witness list. Moreover, Mr. Jordan kept the President informed by his, Mr. Jordan's testimony, which could not be clearer that he was keeping the President apprised, not keeping Betty Currie apprised. His mission was to keep the President of the United States apprised of activity in two arenas: One, the affidavit, which was perjurious; and, secondly, the job. And when he secured the job for her at Revlon after her first interview at Revlon had not gone well, Mr. Jordan then interceded, all on behalf of the President's effort to find a place for Ms. Lewinsky. That second round of interviews resulted in, in fact, a job, and when it did, or a job offer. When that job offer was then extended, Mr. Jordan, according to his own testimony, indicated he called the President of the United States and said, "Mission accomplished."

Now, to us that suggests, in light of the December 5 witness list, her being subpoenaed and the like and the ongoing conversations with Ms. Lewinsky, that there is reason to believe that there is a relationship, a connection, between the job and what she was doing and what it was anticipated she would do in the litigation itself.

Mr. HYDE. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, there is no doubt that this is one of the most embarrassing chapters in American history. Certainly

the President's sexual misconduct was embarrassing to him and his family, and it was embarrassing for all of us to be bombarded with what seemed to be limitless details about it. But also embarrassing has been the reaction of Congress to the referral made by Mr. Starr in September.

What we should have done was this: Asked how these allegations, if true, could destroy our American constitutional system of government, something Mr. Starr did not address in the over 450 pages in his report. But it is the central—indeed it is the only question—that is before Congress, because impeachment is a constitutional remedy for constitutional threats.

What have we had instead? We have seen the Independent Counsel investigating the sex life of the President. We have seen titillating details leaked to the press, leaks that were prejudicial and in stark contrast to the evidence confidentially submitted by the special prosecutor, Mr. Jaworski, 24 years ago. I would note that Mr. Starr is indeed prosecutor. Ms. McDougal was not “counseled” into a jail cell.

After we tossed the Independent Counsel's X-rated material all over the airwaves and onto the Internet, this committee did hardly anything. The House acted to refer the report to this committee September 11th. Today, November 19th, over 2 months later, we are having our first and so far only noticed full committee hearing where we are hearing our only witness, the prosecutor. This would never be allowed in a court proceeding and there are ethical questions in my mind about the propriety in these proceedings as well.

We have the chief prosecutor testifying as a fact witness. More than that, we have the prosecutor vouching for one witness over another. Ignored is testimony by witnesses that favors the President. Ms. Lewinsky's statement that she was never asked to lie, that there was no bargain for a job; Ms. Currie's exculpatory statements. We have cafeteria advocacy. Only those statements that fit getting the President, not anything that is exculpatory.

We want to exalt justice and the rule of law, but there has not been a mention of the intimidation or abuse of witnesses to get statements damaging to the President. I agreed to listen this morning to Ms. Sarah Hawkins in my office, and she came in and she was obviously one of those uncomfortable people who have been addressed by the special prosecutor's office and she was repeatedly threatened with prosecution in an effort to get her to cooperate. Threats that were reinstated after she had spoken criticism to the press, after being told twice by the prosecutors that there wasn't evidence to prosecute her. She lost her business; her career is ruined; her family is hurt. She never had her day in court, and I wonder about the rule of law for her.

Much of America believes this investigation is the living embodiment of what Justice Scalia warned against in his dissent in the case of *Morrison v. Olson*, in which the majority upheld the independent counsel statute. Justice Scalia warned that the independent counsel could be a foe of the President with a staff full of refugees from a defeated administration, the worst kinds of danger of abuse of prosecuting power.

There is no question that the President did not tell the American people the truth about Ms. Lewinsky. He admitted that. You allege

in the report that he lied under oath. But I note that you, Mr. Starr, are under oath yourself this morning, and on page 36 of your testimony you swear that you go to court, and do not appear on the talk show circuit. This very morning you appeared on Good Morning, America. Isn't that a false statement under oath? And shouldn't you be prosecuted for perjury because of this false statement? Given your answer to Mr. Inglis, I would think so. However, I would not urge that. I think that is preposterous. That cannot be what was meant by the Founding Fathers regarding impeachment.

I wasn't going to ask any questions, but because you are here and you might have knowledge about this one thing, I do want to pose three quick questions.

First, when did you first hear any information to the effect that a tape recording existed of a woman, any woman, who claimed to have had a sexual contact with President Clinton?

Two, in or about November 1997, did you discuss with any person the possibility that a tape recording might exist on which a woman claimed to have had had sexual contact with President Clinton, yes or no.

Finally, I know we all know that there is an investigation into leaks from your office to the press. Reporters promise confidentiality to sources and they are very serious about that. I am asking you today, will you release the press from their vow of confidentiality to you and your deputies so this can be fully investigated.

Mr. STARR. Well, you have asked a number of questions. Let me go back to—

Ms. LOFGREN. Three.

Mr. STARR. Yes. The second question I frankly did not understand. I honestly just did—I was trying to take notes.

Ms. LOFGREN. I will read it quickly. In or about November 1997, did you discuss with any person the possibility that a tape recording might exist on which a woman claimed to have had sexual contact with President Clinton?

Mr. STARR. I am not recalling that. The specificity of your question suggests that there may be information, and I am happy to respond to information if that is—

Ms. LOFGREN. Is there any possibility that the answer is yes?

Mr. STARR. I have no recollection of it, but I am happy to search my recollection. This is the first time I think one has asked me such a question, and you are asking—

Ms. LOFGREN. It was possible it was before January then?

Mr. STARR. Yes, but you said very specifically November of 1997, and I will search—

Mr. SENSENBRENNER [presiding]. Does the gentlewoman have information that the Independent Counsel's Office had this information?

Ms. LOFGREN. I have asked these questions, and I think the gentleman is under oath and he can answer the question.

Mr. SENSENBRENNER. Does the gentlewoman have information to this effect?

Ms. LOFGREN. I am not a witness.

Mr. SENSENBRENNER. The witness will respond.

Mr. STARR. I do not have a recollection of that, but I am happy to now search my recollection and to go back in light of the specificity of your question and to provide the committee with information.

Ms. LOFGREN. So you would agree to answer that under penalty of perjury if we followed up with a written request after you have had time to reflect upon it?

Mr. STARR. Well, I am happy to consider any question, and if it is viewed as germane to—what is before you, if this is an effort to try to search my recollection and to see if there is something that perhaps I am not able to recall—excuse me, may I answer this question?

Mr. SENSENBRENNER. The gentlewoman from California will allow Judge Starr to answer the question without interruption.

Ms. LOFGREN. Certainly.

Mr. STARR. I beg your pardon. Now, it does seem to me that if there is an issue that you view as germane, I am happy to consider it, and I will evaluate it. I have given you my best answer now.

Now, with respect to—

Ms. LOFGREN. I believe it is germane, and I would like an answer to the question.

Mr. SENSENBRENNER. The gentlewoman from California asked Judge Starr three questions. Could she please give Judge Starr the courtesy of allowing him to answer the questions?

Ms. LOFGREN. I would love to get an answer.

Mr. STARR. I have concluded what I need to say. Thank you.

Mr. SENSENBRENNER. The witness has concluded. The gentlewoman's time has expired.

Mr. FRANK. There was only one answer. There were three questions.

Mr. SENSENBRENNER. The witness will respond.

Mr. STARR. What was the first question? I am sorry.

Ms. LOFGREN. The first question was when did you first hear any information to the effect that a tape recording existed of a woman, any woman, who claimed to have had a sexual contact with President Clinton?

Mr. STARR. I am unable to answer that question without—I will have to—you are saying “any information” relating to “any.” I would have to search my recollection. I am prepared today for questions that go to this referral, so I will have to search my recollection.

Ms. LOFGREN. We will look for an affidavit on that too. I think you did discuss the opening and expansion—

Mr. ROGAN. Point of order. The gentlewoman's time long ago expired. Those of us waiting to cross-examine the witness would appreciate the gentlewoman following the time schedule.

Mr. SENSENBRENNER. Everybody, regular order. Everybody will suspend. Does the witness have any furtherance to the questions that have been posed by the gentlewoman from California?

Mr. STARR. Not at this time.

Mr. SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Indiana, Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman. I have several thoughts I would like to convey, and then I have some specific questions for Judge Starr.

Some of us here have also been prosecutors and some have served as defense lawyers. We recollect on our own experiences, but none of us has ever come close, not even close, to the attacks that have come upon you and your office and your character and the character of those in your office, by not only some of my own colleagues that are here, some associates of the President, some of the President's own criminal defense lawyers. It is unfortunate, but I suppose it is part of the process in America. But you have kept your head up high and you have maintained your intellect here today and I appreciate that.

Mr. STARR. Thank you.

Mr. BUYER. There are two things for which I also feel very strong about as I represent my constituents of Indiana, because they also take great pride in our heritage. One, that the Supreme Court has held consistently that no one is above the law. Secondly, that the courthouse door is open to everyone in our society. The courthouse in America is not meant just for the wealthy or the powerful; the courthouse door is also open to the powerless, to the needy, and to the poor.

So when I look at this case that you have now referred to Congress, I say that the courts were never meant to be manipulated by the powerful over the powerless. And what do we have here in front of us?

We had the most powerful individual on the face of the Earth of the greatest country this world has ever seen finds himself as a defendant in a civil rights case. I am amazed to hear some people who claim that they are true advocates of civil rights, now somehow claim that it is okay to lie in a civil rights case.

So what do we have? The President took an oath to faithfully execute the laws of the land and has a constitutional duty to do just that. It is alleged that the President as a defendant in a sexual harassment civil rights case in Federal court, committed perjury in his deposition before a Federal judge.

One of my questions to you is did Judge Susan Webber Wright ever discuss with your office a referral for perjury that was before her in person? Also the allegations of suborning of perjury of others, knowing that these government agents would be witnesses before your grand jury, and repeat these lies. This lying under oath before the grand jury is very serious. The tampering with witnesses who also gave testimony before your grand jury, the obstruction of justice by entering into a conspiracy with others to hide evidence, does that not corrupt the legal process? Doesn't that deny the powerless the opportunity to a fair trial in our system?

I ask that as a question of you. I will keep on going.

Mr. STARR. The courts take——

Mr. BUYER. Can you hold that thought. We also have then the allegations of the abuse of power by the most powerful person in our country, by using government resources, his own staff, the Cabinet, and make these presidential privileges for his own personal gain because he was a defendant in a civil rights case, in a civil case, where he could lose money. So he chose deception and deceit because he wanted to protect his own wallet and image from further embarrassment.

We had testimony by legal scholars who said impeachment of judges is also the same as the impeachment of Presidents.

Here is another question I have for you. If truth and fairness are foundations of our justice system, if fairness is the bedrock of justice, and truth is the water that runs through it, and we want to make sure that never is the water in our advocacy of our legal system, polluted by those who seek to deceive, and if in fact the standard we have to go on, which is to defend the Constitution, if treason, bribery and other high crimes and misdemeanors in fact is our standard, is not bribery of such a felony of wickedness and deceit and willful corruption to manipulate others is contrary to the legitimacy of our judicial system, isn't it also polluting then to our bedrock of fairness and truth, and they are of similar character of bribery and therefore would warrant the serious capacity of this impeachment proceeding?

Those are my three questions.

Mr. SENSENBRENNER. The witness will answer.

Mr. STARR. I believe, Congressman, that perjury does take the same dimension in our law as bribery, because it is a corruption of the court system.

In response to your second question, courts do indeed, as I was starting to say, take the truth very seriously, and they want the truth. That is the object of the process, so that the truth will come out, not because it is not the party with the most clever lawyer, but that the facts will come out. Our adversary system is based upon the truthful statement of testimony, under oath, and the compliance with court orders and the like.

You asked, the first question, and I would prefer with respect to Judge Wright, to answer any question only in executive session.

Mr. BUYER. Thank you.

Mr. SENSENBRENNER. The gentleman's time has expired. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the chairman very much, and I thank Mr. Starr for being here, and I acknowledge, Mr. Starr, and that this has been a long day.

Mr. STARR. Thank you.

Ms. JACKSON LEE. I notice that you went to Duke University, and just having gone to law school just up the road, at the University of Virginia. But I have to disagree with some of my colleagues. Firstly, I want to restate the fact that we are not here to undermine you. I also would like to repeat the chairman's notice given that it appears that the President has been cleared, as to Whitewater, Filegate and Travelgate. I think that this is an important announcement today.

But I do want to refer you to the words of Congressman Butler of Massachusetts, who indicated in defining the impeachable offenses of Andrew Johnson that high crimes and misdemeanors would be subversive of some fundamental principles of government and this may violate the Constitution. I am going to make some comments and then I have a brief question, if you would indulge me.

I notice that you have brought to our attention your referral of September 11, 1998. In reflecting on what we are doing, I have read over and over our late colleague's comments in 1974, Barbara

Jordan, who said my faith in the Constitution is whole, it is complete, and it is total.

I understand her now even better. She was a child of a segregated South, and I understand what she meant. Felix Frankfurter said one who belongs to the most vilified and persecuted minority in history is not likely to be insensitive to the freedoms guaranteed by the Constitution.

I ask you, Mr. Starr, do you believe that the President, as any other citizen, has the privilege of the Fifth Amendment?

Mr. STARR. Yes.

Ms. JACKSON LEE. I just want a yes, yes. That would go for Monica Lewinsky and Sarah Hawkins, who happened to have appeared as a witness or was questioned, is that accurate?

Mr. STARR. Yes.

Ms. JACKSON LEE. Monica Lewinsky's mother, Mrs. Lewis?

Mr. STARR. Yes.

Ms. JACKSON LEE. And, of course, Susan McDougal?

Mr. STARR. Yes.

Ms. JACKSON LEE. They would be subject to the rights and privileges of the Fifth Amendment?

Mr. STARR. Yes.

Ms. JACKSON LEE. On page 30 of your testimony when you asked for expanded jurisdiction, on pages 30 and 31, I notice in that recounting there was not one time that you mentioned Paula Jones. Yet as I understand it, you had a lawyer at a law firm that you were associated with. Were you associated with the firm of Kirkland & Ellis?

Mr. STARR. Yes.

Ms. JACKSON LEE. Was Mr. Richard Porter associated with the firm of Kirkland & Ellis?

Mr. STARR. Yes.

Ms. JACKSON LEE. I note that Mr. Richard Porter was asked to serve as counsel to Ms. Jones. Now, he did not serve as that, as I understand. Further, I understand that Kirkland & Ellis prepared pro bono legal documents for what we call the Women's Legal Forum, is that correct?

Mr. STARR. With respect to the latter question, yes. Very briefly—

Ms. JACKSON LEE. Very briefly, my time is short.

Mr. STARR. That is the area I do have personal information and knowledge on, with respect to the Independent Women's Forum.

Ms. JACKSON LEE. I would simply say just in the answers that you have given today, and with the understanding of due process, I would say to you, Mr. Starr, that it seems quite shocking to me that in the course of seeking expanded jurisdiction, that you did not include those contacts, although you noted on the record today, although I thought it was so widely known that it would not need mentioning. Put yourself in a courtroom setting where the prosecutor did not divulge particularly devastating conflict of interest matters to a defendant, and I think due process will come into play.

Let me quickly move to my next question, keeping in mind the shortness of my time. Would you tell me, Mr. Starr, are you a member of the Virginia bar?

Mr. STARR. Yes, I am an inactive member of the Virginia bar.

Ms. JACKSON LEE. But you are a member of the Virginia bar. I am likewise an inactive member of that bar. Have you ever been or are you a member of the American Bar Association?

Mr. STARR. I am.

Ms. JACKSON LEE. With that in mind, let me draw your attention to the Virginia code of ethics, and might I read it very quickly. If after undertaking employment in contemplated or pending litigation a lawyer learns or it is obvious that he or a lawyer in his firm is to be called as a witness on behalf of his client, he shall withdraw from the conduct of a trial and his firm. The ABA code of professional responsibility says in considering ethics, the roles of an advocate and of a witness are inconsistent. The function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

A judge for example.

Mr. SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. I ask the chairman to indulge me 30 seconds.

Mr. SENSENBRENNER. The Chair will time the gentlewoman.

Ms. JACKSON LEE. Let me paint the picture for you. I have served as a judge. I have been somewhat of a prosecutor on a select committee on assassinations. You have done a similar thing. How can you move from the prosecutor's chair to the judge's chair to the witness chair in any court in America, Mr. Starr? I cannot believe that any American would perceive any justice, as the Constitution so says, in having a prosecutor who acts as a judge and who acts as a witness.

With that, Mr. Chairman, I have no further questions.

Mr. SENSENBRENNER. The gentlewoman's time has expired. The witness will answer the question.

Mr. STARR. Both my office and myself, personally have, in fact, complied with applicable ethical codes, and I would be happy to focus on any specific issue under the Virginia code.

Ms. JACKSON LEE. Thank you, Mr. Witness.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF TEXAS

I would like to thank Chairman Hyde and Ranking Member Conyers for giving me this opportunity to speak on this important subject.

Yesterday, as I walked through the Capitol Building, I begin to think about this hearing, the November 3rd, election, my responsibility to uphold the Constitution, and my obligation to my constituents in Texas. As I turned to leave the building, I saw these words inscribed on the Capitol's ceiling in black letters, "Here sir, the people govern." These words were used by Alexander Hamilton to refer to the House of Representatives at the New York federal Constitutional ratification convention. This is the people's house and they have spoken, their voices were heard loud and clear; it's time to put this divisive issue of impeachment in our past, it's time to prepare for America's future, it's time to move forward and develop solutions to America's problems, it's time to focus on healthcare, and it's time to direct our resources at our children's future.

Unfortunately, there is a small group of individuals who are hellbent on continuing this divisive course of action under the guise of "upholding their Constitutional duty."

Imagine a justice system where a prosecutor can present charges to a grand jury, obtain an indictment and then proceed to trial. During the trial, the prosecutor recognizes that he has a weak case and in desperation he calls himself as a witness, to testify about the defendant's prior bad acts and his rationale for charging the defendant. While testifying, he admits that individually and collectively, the charges are insufficient to meet the standard of crime, but he believes the defendant is

guilty of a pattern of abuse to obstruct justice. Certainly, if this incident occurred and we lived in this state, we would be outraged at the waste of financial resources. In fact, we would call for this prosecutor to end this charade, immediately, because his conduct and abusive tactics would emasculate the system he is attempting to protect.

Additionally, there is the risk that this testimony will not be objective; the prestige of his office will artificially enhance the testimony's credibility and the likelihood of confusion on the part of the jury. *United States v. Birdman*, 602 F.2d 547 (3rd Cir. 1979). Furthermore, the Virginia Code of Professional Responsibility Rule DR 5-102(A), which states, "If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial.

More importantly, this prosecutor's conduct may violate the American Bar Association's Model Rules of Professional Responsibility. Rule 3.7 states, "A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness." The comment accompanying this Rule states,

The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

A prosecutor is not just an advocate, he is a "minister of justice." Nowhere in the history of this country's system of jurisprudence have we allowed a prosecutor to take the witness stand to "vouch for the credibility" of the evidence presented during trial; to do so would be a miscarriage of justice.

Simply put, an officer of the court is charged with preserving the public confidence in the process of justice. Ethical Canon 9 states, "A lawyer should avoid even the appearance of professional impropriety." The commentary accompanying this rule states:

Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our primary concern. No practice must be permitted to prevail which invites towards the administration of justice a doubt or distrust of its integrity. *Erwin M. Jennings Co. v. DiGenova*, 141 A. 866 (1928).

Likewise, allowing Independent Counsel Starr to come before the Judiciary Committee to testify for 2 hours "about a pattern of abuse to obstruct justice" will eviscerate the purpose of the Independent Counsel Act. This Act was designed to provide a mechanism to prevent inherent conflicts of interest which could arise where the Executive branch of government must supervise or conduct an investigation of an individual associated with its office.

Richard Porter, a member of Mr. Starr's law firm, Kirkland & Ellis, was acting in an advisory position for the Paula Jones legal team on her sexual harassment suit against President Clinton. Moreover, Mr. Starr contemplated writing a brief in support of the *Jones* suit prior to becoming Independent Counsel. More importantly, this information was not disclosed to Attorney General Reno at the time of his appointment to this neutral non-partisan post. Mr. Starr had an obligation to fully disclose his biases, prejudices and any relationships between his firm, Kirkland & Ellis, and the Paula Jones legal advisors.  
The Bible teaches,

For where your treasure is, there will your heart be also. . . . No man can serve two masters; for either he will hate the one, and love the other; or else he will hold to the one, and despise the other.

Mr. Starr, you cannot serve the interest of the tobacco companies while maintaining your ethical obligation under the Independent Counsel Statute. Under the statute you are permitted to continue your private law practice; however, working for the interest of tobacco calls into question your motivation for authoring this salacious referral and your continuous assault on the Presidency.

The Office of the Independent Counsel was created to promote public confidence and integrity in the judicial system. Section 595(c) authorizes the Office of the Independent Counsel to submit a referral to Congress to guarantee that its findings would not be thwarted by internal sources within that individual's branch of government. This concept which is consistent with the separation of powers doctrine was instituted to prevent unfettered authority in a single branch of government. Accordingly, each branch is vested with the power to check and balance the others.

Article I, section 2 of the Constitution grants the House of Representatives the sole Power of Impeachment, while Article I, section 3, authorizes the Senate to try

all Impeachments. Hence, the Legislative branch is charged with checking the Executive branch.

Impeachable offenses are political, as they relate to injuries done immediately to society itself. The Framers never intended impeachment or the threat of impeachment to serve as a device for denouncing the President for private misbehavior or for transforming the United States into a parliamentary form of government in which Congress can vote “no confidence” in an executive whose behavior it dislikes. The President is elected by the people of the United States and it is not the prerogative nor duty of the House of Representatives to undo that election because of partisan politics.

It is not the fate of a particular individual that is at stake, it is not about this existing President, but the institution of the Presidency and the Constitutional process that must rise above the arena of partisan politics. The purpose of Impeachment is to curb breaches and abuses of the public trust. The Framers realized that impeachment is final and non-appealable.

Professor Charles Black stated in *Impeachment: A Handbook*, that impeachment should be invoked only against “serious assaults on the integrity of the processes of government and such crimes as would so stain a President as to make his continuance in office dangerous to the public order.”

During the impeachment trial of President Andrew Johnson, in 1867, Congressman Butler of Massachusetts, announced the following definition of impeachable high crimes and misdemeanors,

. . . to be one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution.

Certainly, everyone agrees that the President’s conduct was wrong. In fact, it was morally reprehensible, but it does not rise to an impeachable level. Impeachment is reserved for serious public wrongdoing of official acts, not private matters. In 1792, Alexander Hamilton was investigated by Congress for alleged misconduct. It was discovered that Hamilton was making financial payments to conceal an adulterous affair. After Congress heard Hamilton’s testimony, it was concluded that the matter was private, and not impeachable. Similarly, President Clinton’s conduct, although improper, should not be regarded as an impeachable offense because it was not the product of an illegal use of power.

Twenty-five years ago, the House Committee on the Judiciary faced a similar responsibility; the impeachment of President Richard Nixon. The Constitution imposes a grave and serious responsibility on Congress to protect its fabric and integrity. It would be a dereliction of duty if we embarked upon a path that would alter the constitutional threshold for impeachable offenses.

Today, the Members of the House of Representatives consult no common Oracle or Starr, but the Constitution. More importantly, we respect the rights of individual citizens. It’s time to move forward, it’s time to put foolishness aside, it’s time for America’s business.

Mr. HYDE. The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman, and thank you, Judge Starr. Quickly, let me refer to a column by David Broder in reference to this “400 professors of history” letter. Mr. Broder says: when academics decide to become activists, they sometimes bring badly needed wisdom and perspective to a raging political debate. But when they plunge in heedlessly, they risk looking ridiculous. He says the House is following the process set forth in the Constitution. This tenured trashing of Congress for meeting its responsibility says more about the state of the history profession than about the law of the land.

I am glad that we can at times today return back to the facts in this case, and, Judge Starr, I want to commend you for setting forth a clear, documented, compelling case against the President. You have provided a road map for us to see how and when the President chose deception rather than truth at many important crossroads in our judicial system’s search for the truth.

I must say that I have seen this before, but you mention it again in your statement. I think one of the most chilling episodes I think

I can imagine in American history occurred with Dick Morris, and again I will read from your statement and account of Mr. Morris's testimony. But this is one of the choices you referred to on page 21 that the President makes.

After the public disclosure of the President's relationship with Ms. Lewinsky and the ongoing criminal investigation, the President faced a decision. Would he admit the relationship publicly, correct his testimony in the *Jones* case, and ask for the indulgence of the American people, or would he continue to deny the truth?

On this question, the President consulted others. According to Dick Morris, the President and he talked on January 21st. Mr. Morris suggested that the President publicly confess. The President replied, but what about the legal thing, you know, the legal thing, you know, Starr and perjury and all. Mr. Morris suggested they take a poll. Mr. Morris suggested they take a poll. The President agreed. Mr. Morris called in with the results. He stated that the American people are willing to forgive adultery, but not perjury or obstruction of justice. And our President of the United States, the chief law enforcement officer of this country, the one who hires the Attorney General and 93 U.S. Attorneys who enforce all the Federal laws against you and me, this President said, well, we will just have to win then.

That is chilling. That is absolutely scary that we have got that mentality in the position of being the chief law enforcement officer. As a former prosecutor, and I know you have tremendous credentials, I know it frightens me to have these circumstances existing.

I have two questions for you. I don't know what the answer is to that, and I think that is one of the reasons we are here today.

Two questions: I am not going to have the opportunity to perhaps cross-examine the President, I don't know if he is going to take our invitation, and I don't know if he is going to respond, and I don't think it is appropriate that I question his lawyers here today, but one thing that I have a question on, on this assertion of privilege they make the claim that this is private conduct that underlies this, but yet they go out and file documents asserting an executive privilege claim, which you and I both know is rooted in the Constitution, and it is meant to protect presidential communications regarding official decision making, in other words, public conduct.

Is this not talking out of both sides of their mouth? How can they assert a privilege for public conduct while saying it is really private conduct?

Let me get the second question so you can answer them both, as I will let you have the balance of the time. I have alluded to the fact that I feel your credentials are impeccable, and based upon your experience and the experience of the many prosecutors you have referred to today, it is tremendous, and based upon all this, I question you, do you have an opinion, not saying whether or not these are impeachable offenses, but as to the quality of this case in terms of criminal law violations? Is it a circumstantial case, but is it a weak case, or a strong case, or something in between?

Mr. STARR. With respect to your first question on assertion of privilege, I do agree with you that it is odd, I think it is irregular, to both contend that this is entirely a matter involving personal conduct, and at the same time invoke executive privilege to protect

fact witnesses who are being asked facts with respect to that matter. So I think there is an incoherence and inconsistency with the position.

With respect to the quality of the case, my own judgment, Congressman Bryant, is that the evidence is strong.

Mr. SENSENBRENNER. The gentleman's time has expired. I think it now is proper to take a 10-minute recess. I would like to ask the audience to remain in the room until Judge Starr exits the room and ask the members of the committee either to stay in the room or not go too far away. The committee stands in recess until 6:10.

[Recess.]

PREPARED STATEMENT OF ED BRYANT, A REPRESENTATIVE IN CONGRESS FROM THE  
STATE OF TENNESSEE

As we embark on this important and solemn inquiry today, we must remind ourselves of what has brought us to this point in our nation's history. We are here to look into allegations that our President has committed impeachable offenses by lying to a federal grand jury and obstructed a investigation into his alleged wrongdoing.

There is no one in this room who would deny that our country is based on trust. The trust we have in our leaders, in our judicial system and our Constitution is what has made our country prosperous. Other countries have relied on our system of government to protect them from those who would break the laws for personal gain.

When allegations of wrongdoing by the President are made, they need to be investigated for credible evidence. To ensure that process, we rely on the Attorney General to make the decision for an independent counsel and a three-judge panel to appoint the right person to begin an independent investigation.

And what has been brought before this committee is a referral charging that the chief law enforcement officer of our country, who took a solemn oath to abide by the laws and by our Constitution, has committed perjury, obstruction of justice and abuse his power as President. These are not minor offenses, but rather go to the trust Americans have in our system of government and the rule of law.

These allegations are not minor offenses. They are a breakdown in the trust we have in our leaders, our judicial system and the office of the President. We are now faced with the very real fact that our chief law enforcement officer can break the very laws he has sworn to protect for his own personal gain. As a result, we are sending a message to those who believe in our system of government that we will turn away from our legal responsibilities to benefit those who break our laws.

Today, I anticipate that my colleagues on the other side of the aisle will use an old defense attorney tactic by shifting the focus of attention away from the President and on to the Independent Counsel. These questions will be brutal and accusatory, but in the end we must not lose sight of what our duty is in this hearing—to get to the truth of what the allegations are against the President.

We also must remember that this hearing is to establish the facts in the case. We have established a fairness that gives the White House attorneys an opportunity to cross examine the Independent Counsel along with the Democrats' lead attorney. My hope is that all of the questions surrounding the referral can be answered and we can quickly come to a resolution on this matter.

As I said before, we must remember that this is a hearing into allegations against the President and we must stay focused on that if there is to be any final conclusion to this matter. What is hanging in the balance is our system of government and the entire trust our nation has on our laws.

I thank the chairman.

Mr. HYDE. The committee will come to order. The committee will come to order, please.

Now, ladies and gentlemen, I would just like to announce sort of a schedule; things are kind of ad hoc up here. We are going to finish with the members' questioning under the 5-minute rule. Then when that happens, we are going to take a half-hour dinner break. It is unfortunate we just took a break, but maybe it was fortunate for some of you, but anyway, we will, at the end of the completion

of the members' questioning, take a half-hour break, and then we will come back, and Mr. Kendall, I believe, will question Mr. Starr. We will start out with a half-hour, and then if Mr. Kendall needs more time, as I suspect, we will be liberal in allowing that so that he can ask what he wants to ask, or needs to ask, and then Mr. Schippers will question, if he desires to, and then we will let Mr. Starr go home with three medals and a Purple Heart. And then we go to a full committee meeting, but you needn't stay for that, although God knows you are welcome.

So the next questioner is the distinguished gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much. Mr. Chairman, let me just start, before I get into the areas that I would like to pay attention to, I would like to help out my friend from California, Congresswoman Zoe Lofgren. She asked you, would you be willing to release the press from their confidentiality pledge to you and your office so that we can get the leaks investigated that are in question.

Mr. STARR. I believe that it would, Congresswoman Waters, be unwise and inappropriate for me at this time in this setting, and I am delighted to pursue this in executive session.

Ms. WATERS. That's okay. Your answer today is you would be unwilling to do that?

Mr. STARR. I believe it would be unwise at this time with litigation under seal still proceeding, but I am very respectful of the orderliness of that proceeding, and it seems to me that that—

Ms. WATERS. Okay. I just don't want to take up a lot of time with it. I just wondered if you would do it or not. The answer is no.

Mr. STARR. Excuse me.

Ms. WATERS. Yes, I understand.

Mr. STARR. At this time, because of the pendency of litigation—

Ms. WATERS. Let me just go on, because I have only 5 minutes. I have been one of your harshest critics, and you know it. I have been appalled by what I consider the gross unfairness of the procedure, of the way in which you have conducted yourself. I have been very critical of my colleagues on the other side of the aisle because of the way that they received these referrals and then dumped them into the public domain without any opportunity for the administration or White House to review the information, so I make no bones about it. I think that some of the tactics that have been used are unacceptable. I think that the moment it was understood that you were going to remain, for example, on the payroll of your law firm where you would be representing the tobacco companies, for example, while the President of the United States had made them a number one target in his administration for dealing with trying to discontinue the smoking by youth in our society and dealing with all of the health risks, and I think that it is just totally unacceptable that as late as 1995, you were representing the tobacco interests in your law firm at the same time that you were working for us.

How long did you work for your law firm representing the tobacco interests, and how much did it overlap with this investigation starting with Whitewater?

Mr. STARR. I had two representations. One was an appeal on a class action, which was in the time frame, Congresswoman Waters,

of 1995 and 1996, and prior to that time, I believe it was 1994, I would have to reconstruct this, I took on a specific representation, again an appeal, which, as you may know, is what I typically do. That was in the 1994 time frame.

The issues that I took on were in one instance constitutional issues, and the second was a Federal civil procedure issue.

Ms. WATERS. Did you ever feel you were in conflict of interest by working for your law firm at the same time that you were working as Independent Counsel?

Mr. STARR. Congresswoman Waters, I did not, and I had ethics advice, both at the law firm and in the Independent Counsel's Office, and our effort has always been in our office to make sure that we are addressing these issues carefully.

Ms. WATERS. You do normally seek the advice so that you will not get into ethical problems; is that right?

Mr. STARR. Yes, we do.

Ms. WATERS. Let me just ask you, you did take the oath of office here today, and you mentioned in your testimony that the President took the oath of office to tell the truth. However, when you were asked about how you conducted yourself when you sought to expand your jurisdiction in this matter, you literally did not disclose information that may have caused the Attorney General to rule differently, and what is interesting about it, the way that you presented it today, when you were asked very specific questions, you said, I don't recall, I don't quite remember, I am not so sure, I will have to search my memory, those kinds of answers. Yet, when the President of the United States responded in that way, you outright called him a liar.

Now, am I to assume that your inability to recollect your involvement—for example, how many hours did you spend on the brief that you did for the Independent Women's Forum?

Mr. STARR. Congresswoman Waters, the answer to the question is I did no brief for the Independent Women's Forum, and I also respectfully, but firmly, disagree with your characterization. I tried to put before this committee the events with respect to January of 1998, and why it was that certain things that I had been involved with, such as the Independent Women's Forum—

Ms. WATERS. What did you do for them?

Mr. STARR. I beg your pardon?

Ms. WATERS. What did you do for the Independent Women's Forum.

Mr. STARR. I considered, as I did for Bob Fiske, doing an amicus brief solely limited to the proposition that the President of the United States is just like the rest of us in that as a private citizen he must, in fact, respond in court to lawsuits against him.

Ms. WATERS. You didn't consider that that was possible information that you should have disclosed to the Attorney General when you were seeking to expand your jurisdiction?

Mr. STARR. May I respond briefly?

Mr. HYDE. Please.

Mr. STARR. As I indicated, that information with respect to the Independent Women's Forum was, I believed then and I continue to believe, publicly reported. What I have indicated today to the committee is the Bob Fiske inquiry had not been in the public do-

main, but I also did not think that was an issue of relevancy to the Attorney General, even though frankly, perhaps, I should have thought of that inasmuch as that was the Department of Justice through Bob Fiske, the Independent Counsel appointed by the Department of Justice.

Mr. HYDE. The gentlewoman's time has expired.

Ms. WATERS. Yes, I do believe—Mr. Chairman, I would ask you for 30 seconds, just one issue I have to get in here about abuse of power.

There is a whole list of items that I would like to discuss with you. Much has been said about what happened with Monica Lewinsky over in the shopping center at the hotel, but there are some others that I am very concerned about. Are you familiar with Ms. Steele and what she is alleging about what you are doing? Did your investigators ask for her tax records, her bank records, her credit report, her telephone records, and question the adoption of a child to try and find out whether it was legal? Did they treat her that way?

Mr. STARR. Congresswoman Waters, the answer to the first question is—if I have the questions right, you asked a series of questions. What was your first question? I think the answer was yes.

Ms. WATERS. Tell me about Ms. Steele. What do you know about her? Did you know your investigators had asked for her tax records, her banks records, her credit records, telephone records, all because supposedly she was told something by one of the targeted witnesses in this case?

Mr. STARR. I now understand the question. We have asked, through FBI investigators, a variety of questions to individuals that in the judgment of professional, experienced investigators have a bearing on the witness's credibility.

Ms. WATERS. Did you know she felt abused by you and your investigators?

Mr. STARR. I am aware that there are issues that she has raised—

Ms. WATERS. Okay, fine. I just wanted to know if you knew. Finally—

Mr. HYDE. The gentlewoman's time—if you are not going to give him a chance to answer, your time has expired.

Ms. WATERS. Let me just say this. He may take the time to answer, but there is one more, a 16-year-old boy who was subpoenaed at school that you sent your investigators to school to get because you were trying to get his father, and you know who I am talking about.

Mr. CANADY. Mr. Chairman, regular order.

Mr. HYDE. The gentlewoman—really, give Mr. Starr a chance to answer, and please don't ask more questions.

Ms. WATERS. All right, okay.

Mr. STARR. I can be brief. That was in the Arkansas phase of our investigation. The individual in question we believed had relevant information. No subpoena, as I understand it, was, in fact, served, but the agent in question did go to the school.

In my judgment, that was a misjudgment. I don't think he should even have gone to the school. But it is my best understanding that he did not, in fact, effect the service of the subpoena on the young

person there. If I am mistaken, then I will say this: No, we should not have gone to the school. But could I add this: We have had in this investigation jurisdiction granted to us in a wide variety of areas that has caused—when I took over for Bob Fiske, he had a presence of about 120 people in Little Rock.

Congresswoman Waters, there may be steps along the way that you would say, well, why was that particular judgment made? Gosh, that wasn't a very wise thing to do. And I do think it is unwise to go to a school. I completely agree with that.

Ms. WATERS. What about the 80-year-old grandmother, the same woman who—

Mr. HYDE. The gentlewoman's time has expired. Will you please follow the Chair?

Mr. Chabot. Mr. Chabot is recognized.

Mr. CHABOT. Thank you, Mr. Chairman.

It seems pretty clear to me that there is a strategy by Bill Clinton and his allies to demonize anybody who gets in their way: Paula Jones, Kathleen Willey, Henry Hyde, you, Judge Starr, this committee, even the press to some extent. It is everybody else's fault, and everybody else is to blame, everybody except Bill Clinton, except the President.

Now, in criminal cases, and I think Mr. Canady referred to this, it is a pretty common practice to do this. If the facts of the case are against you, if your client is pretty clearly guilty, put the police on trial; they planted the evidence; the police are corrupt; they forced your client to sign the confession—anything to get your client off the hook.

Judge Starr, my question to you is this: How difficult is it for you as an Independent Counsel to do your job when you are up against this onslaught, particularly when you are limited in your ability to defend yourself and to defend the other prosecutors under you, and to defend your staff in a public forum; limited, that is, until today?

Mr. STARR. Well, I think it is inherently a challenge, and I must say that it does, in my judgment, raise questions about the relationship between the Independent Counsel, the Congress of the United States, and I am speaking generally, and also the Justice Department. But I can only give you my philosophy.

I think it is my obligation to follow the rules, and that is what we seek to do. That is why I reached out and tried to get the right kind of ethics advice and the like to make sure that some of these difficult judgments were, in fact, done the right way. And that is all we can do.

But, for example, we cannot set up a congressional liaison shop. We just don't have the resources to do that. We can't set up an effective public information apparatus the way the great departments of government do.

So I think it is inherently a grave challenge for an independent counsel to be told, go set up shop, and you are out there on your own, and we just look eventually to some report or conclusion and the like, and you are a bit of the Lone Ranger, as it were, in terms of whether you are part of any entity or structure. And that is one of the reasons that, Congressman, what I tried to do was to create mechanisms whereby we had not only a deliberative process so that the kinds of issues that are being raised here today we can respond

to and say, yes, we did have a process in place; yes, there were questions raised about what we did on January 16th at the Ritz Carlton. We consulted with the Justice Department. We had experienced prosecutors evaluating it. They were very familiar with the ethics rules, and they made judgments based upon good faith determinations of what the appropriate procedures were. But we had to create that mechanism all by ourselves, and I tried to do that to the best of my ability.

Mr. CHABOT. Early in the investigation of the Lewinsky matter, President Clinton promised to fully cooperate with the investigators, stating that he wanted to divulge more rather than less, and sooner rather than later. How cooperative has the administration been in your investigation?

Mr. STARR. With respect to this phase of the investigation, the administration has been uncooperative. To the contrary, it has litigated numerous issues, although in fairness, in fairness, I think of the things that we have litigated, and in fairness, the administration has produced a goodly number of records and the like, and so I would say at a routine level, requests for subpoenas or documents and so forth, there certainly has been that, and I don't want to be unfair about saying that.

But there is a marked distinction between the cooperation that we received, for example, in the FBI files matter and the cooperation, or lack thereof, that we received in this and in other phases of our investigations. And to me, one of the markers is the invocation of privileges. It may very well be that the considered judgment of this body is that any privilege can be invoked no matter how unmeritorious one thinks it is, and that that is not an abuse. Perhaps we live in such a litigious age that that is the new way of doing things.

I disagree with that. I think if privileges are invoked for the purposes of delay and have the intended effect of delay—and I think that is what happened here—they lose. I have heard complaints about the tactics of the investigation, and yet we go to court. And as I indicated earlier, 17 visits to the courts of appeals, thus far we have prevailed in each of those. That sounds like an investigation that is getting it right.

Mr. CHABOT. Let me just conclude by referring to your report towards the end of it where you stated, and I quote, "given the hurricane force political winds swirling about us, we were well aware that no matter what decision we made, criticism would come from somewhere. As Attorney General Reno had said, in a high profile case like this, you are damned if you do, and you are damned if you don't, so you better just do what you think is right, what is the right and the fair thing."

Mr. HYDE. The gentleman's time has expired. I thank the gentleman.

The gentleman from Massachusetts, Mr. Meehan.

Mr. MEEHAN. Mr. Starr, as a former judge and appellate litigator, I am sure you know how important your own credibility is to the decisions that this committee must make. The key fact-finding in this investigation has been done exclusively by you and your deputies. All of the important grand jury testimony of Monica Lewinsky, Linda Tripp, and President Clinton was elicited under

your direction and never subject to cross-examination. You and you alone decided who to immunize and what to investigate. So if your credibility is tainted by bias or poor judgment on your part, this committee and the American people must at the very least treat the many inferences that you draw in your referral with extreme caution, and must question whether your referral is indeed the whole story.

What do we see, Mr. Starr, when we look at your personal involvement in the issues before us? Well, we have heard a lot of them this afternoon. Among other things, we see that you consulted with Paula Jones' attorneys at least a half a dozen times in the summer of 1994 about how to frame an argument against presidential immunity, something you apparently failed to disclose to the Justice Department when you sought to expand your jurisdiction in January of 1998, and something that might have influenced the Attorney General to appoint someone other than you to carry out this part of the investigation.

During the same summer, you appeared on PBS's "News Hour" to argue against the President's position in the *Jones* case. For most of your tenure, it has been indicated here, as Independent Counsel, you remained a partner in a private law firm, receiving \$1.2 million in salary per year, while at the same time one of your law partners was leaking an affidavit in the *Jones* case to the Chicago Tribune in November of 1997, as well as steering Linda Tripp to you so that she could entrap the President without becoming entrapped herself in an illegal tape recording charge.

You represented the Brown and Williamson Tobacco Company in 1995 class action litigation, a company that had a major stake in the failure of the Clinton Administration, of its initiatives to keep kids from smoking, and the Justice Department's criminal investigation of big tobacco.

You made a commitment in February of 1997 to become the dean of Pepperdine University's new School of Public Policy, a school whose creation owes in large part to a \$250,000 donation from a newspaper publisher with a habit of funding anti-Clinton Administration publications, and also Arkansas-based dirt-digging operations.

You made a \$1,750 contribution to your firm's political action committee in January of 1995, a PAC that in turn contributed to four Republican candidates for President who were running against President Clinton in 1996.

You were hired as a consultant to the Bradley Foundation in the summer of 1995 on the issue of school vouchers, a foundation that provides funding to some of President Clinton's harshest critics.

And now, Mr. Starr, when we read your referral, we see that you have found the time and the space to specifically mention that one of the days that the President and Monica Lewinsky got together was Easter Sunday, but you chose not to include the critical statement from Ms. Lewinsky's grand jury statement, quote: "No one ever asked me to lie, and I was never promised a job for my silence."

Mr. Starr, your own ethics advisor, Sam Dash, is on the record stating that while your conduct in many of these respects violated no technical legal ethics rules, that conduct, and I quote, "does

have an odor to it." Further, Mr. Dash said on another occasion, quote, "I can understand how responsible reporters and reasonable people could question Ken's judgment."

Mr. STARR, in light of these facts and opinions, is it your position that there is no basis whatsoever for the American people to question the credibility of your work?

Mr. STARR. My answer is the credibility should be assessed by the evidence that is contained herein. This is an elaborately documented—

Mr. MEEHAN. Excuse me. Mr. Starr, you made inferences, you are asking us to rely—

Mr. HYDE. Mr. Meehan, your time has expired. Give the witness some time to answer the long—

Mr. MEEHAN. But this isn't just about the evidence, this is about the credibility; wouldn't you agree?

Mr. HYDE. Would you let the witness answer? Please, take such time as you need, Mr. Starr.

Mr. STARR. Congressman, you may disagree, but what has been submitted to you is an elaborately documented product of professional prosecutors. These are professional prosecutors from around the country, some of whom are on detail from the Justice Department.

Mr. MEEHAN. I am a former prosecutor myself.

Mr. STARR. Yes, I am aware of that. With respect to the practice of law, I think that is a serious question, should independent counsels do it, and I know my judgment has been called into question by some. I think Sam was very honest. Sam said, I just don't think you should be practicing law at all.

May I say this? The statute contemplates that independent counsels are going to be drawn out of private practice, and I have lost count, but at one time 17 of the 18 independent counsels did, in fact, carry on private practice. And if I may say, that was part of the original understanding that I was going to continue with my private law practice while giving this, as I have always sought to do, the top priority.

With respect to issues about the firm, it is a very large firm with a large number of offices in several cities, and with a number of lawyers.

Mr. MEEHAN. But you have a duty under the code—

Mr. HYDE. Mr. Meehan, please. Mr. Meehan, will you please—

Mr. MEEHAN. If you would recognize that—

Mr. HYDE. Mr. Meehan, will you withhold, please.

Ms. WATERS. That is why we should have more than 5 minutes.

Mr. MEEHAN. Mr. Chairman, these are complicated issues. You can't just get to it in 5 minutes.

Mr. HYDE. Have you finished?

Mr. STARR. I think I have concluded my answer, Mr. Chairman.

Mr. HYDE. Thank you.

The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

As the day draws longer, the charges become more absurd. I think I heard, or maybe I was mistaken, that we were going in the direction of the last line of questioning with Monica entrapping the

President. Now, there is a rich one. I suppose that is the same as the President being trapped into perjury.

As a matter of law, is it not well established, Judge Starr, that there is no such thing as being trapped into perjury?

Mr. STARR. Yes, that is true.

Mr. BARR. One can never be forced to tell a lie before a grand jury or a Federal court; is that correct, legally?

Mr. STARR. There is no excuse for telling a lie, you are correct; I mean, under oath.

Mr. BARR. Let me offer up several presumptions and then ask you a question.

Let's presume, Judge Starr, that Linda Tripp is a really nasty person. Let's presume further, Judge Starr, for purposes of a hypothetical, that Lucianne Goldberg is a crafty manipulator. Let's presume that Monica is an oversexed blabbermouth. Let's presume that there really is a vast right wing conspiracy out there somewhere, maybe at work here today. Let's presume that Paula Jones really was interested just in the money. Let's presume that the independent counsel statute is not a perfect statute, and let's presume that, horror of horrors, you use tobacco products. Let's presume all of those awful things.

Would any of that, in your professional judgment, change the conclusions contained in your referral and in your testimony today that there is substantial and credible evidence that President William Jefferson Clinton may have committed impeachable offenses?

Mr. STARR. It would not change it. The facts have a real power to them, and it was Justice Brandeis who said, "facts, facts, facts; give me facts." And that is what we have sought to do, Congressman, in this referral.

Mr. BARR. You have, and I commend you for standing up to the nonsense, and that is putting it mildly, that you have had to put up with today in questions by the other side, and in the last several years, and I really do commend you for your ability to stand up in the face of that and stick to the facts and stick to the law.

Talking briefly about the law, Judge Starr, we are not limited here in this committee just to what you present to us, in considering whether or not pursuant to the House resolution directing that we look into the possible impeachment of William Jefferson Clinton, to just what you have presented, are we?

Mr. STARR. Not at all. I have a statutory duty, but you have a constitutional duty.

Mr. BARR. Thank you.

I do have one quick question, and then I would like to, if we could have my paper distributed, please, to the members and Judge Starr. But before I refer to that, with regard to your reference to the FBI file case on page 47 of your written testimony, Judge Starr, has your office interviewed or deposed Mack McLarty with regard to Filegate?

Mr. STARR. I cannot recall off the top of my head whether we conducted that particular interview or not. I will say this, and I can check and again get back to the committee, but my evaluation and assessment, based on the professional prosecutors who carried this out, is that it was thorough, but I have to check to that.

Mr. BARR. I would appreciate it, because your conclusion there left me a little bit concerned, because I hear a great deal from the American people of concern about abuse by the FBI in Filegate, and it is my understanding that there are a number of people that have not yet been deposed or fully deposed in that case, and I really would appreciate it if you would check on that so we don't completely close the door on that.

There is a document which I believe has been contributed. This is a document that I will introduce into the record with my written comments, by Jerome Zeifman, the former chief counsel of the House Judiciary Committee in 1973 and 1974, and it is rather extensive, and I have no—I am not going to make you read it today. [The information follows:]

PREPARED STATEMENT OF BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE  
STATE OF GEORGIA

Today's hearing may not change a single mind on this committee. We will spend the day asking Ken Starr questions, some of us motivated by a desire to learn, others motivated by a desire to score political points, and others driven by having a few minutes in the ever-shifting national limelight. When it's all over, those of us who think the President has committed impeachable conduct will continue to say so. Those of us who believe the President was the innocent victim of a vast conspiracy will continue to oppose impeachment.

In many ways, this hearing is a paradigm for the illness ailing our Democracy. In the days of Thomas Jefferson, Alexander Hamilton, Henry Clay, and Daniel Webster, television cameras were absent. However, the words that soared in these chambers made their absence scarcely noticeable. These men were not forced to reach a distracted and disinterested public in the instantly vanishing banalities we call television sound bites. Their words were based on principles that sprang from their hearts, grew in their minds, and gained acceptance in the forge of debates that shaped an infant nation.

Unlike the speeches many offer these days, the words of our predecessors had the power to persuade; because they were based on true ideas, and on an understanding of government and governing that is all but lost in most of what happens in the Congress of this last decade of the 20th Century. Debates mattered, and they actually swayed votes. Speeches enacted ideas.

What has happened to us? Where has our capacity to think rationally gone? The report we have read, and that we will discuss today, remains un rebutted. Think about that. No one is questioning the facts.

What do the facts in this case prove? They prove the President lied to the American people; and perjured himself before a federal court, and before a grand jury. They also prove he engaged in an effort to obstruct justice and tamper with witnesses. These un-rebutted facts conclusively prove that, as we begin this debate, a prosecutable felon sits in our nation's highest office.

Additionally, I introduce into the record today a memo written by Jerry Zeifman, concluding the President has engaged in bribery. Mr. Zeifman, who served as counsel for Chairman Rodino in the Watergate hearings, is from a different political party than I am. We probably disagree on more than 90% of the major political questions. However, we share a reverence for the rule of law, and a desire to vindicate it.

Sadly, I fear Jerry Zeifman may belong to another—vanishing—generation of political leaders; a generation willing to put partisanship aside in order to preserve the Constitution. Another leader of years gone by put it this way:

Americans are free to disagree with the law but not to disobey it. For a government of laws and not of men, no man, however prominent and powerful, and no mob, however unruly or boisterous, is entitled to defy a court of law. If this country should ever reach the point where any man or group of men, by force or threat of force, could long defy the commands of our courts and our Constitution, then no law would stand free from doubt, no judge would be sure of his writ and no citizen would be safe from his neighbors.

These words were delivered to the Nation by President Kennedy on Sept. 30, 1962. The President made these remarks regarding one of the greatest moral ques-

tions we ever faced as a nation. That question was whether an American's skin color should void his ability to obtain equal justice under law. Fortunately for us, we answered that question the right way, beginning a successful fight for justice that forged the opinions of many in this room today.

We face the same question today. President Kennedy's words are no less applicable now than they were then. Bill Clinton may not agree with sexual harassment laws, but he must follow them. Bill Clinton may be a prominent person, but that does not give him license to lie in court.

We have a huge responsibility as a Nation. We can close our eyes. But when we open them, the problem will still be there, looming before us with a brooding darkness. We can answer this question the wrong way. And allow the President to hold his office with the knowledge that he has committed multiple felonies. Or, we can answer this question the right way. The only right answer to the question is to respond to presidential felonies with impeachment. Regardless of whether the President is ultimately removed by the Senate, we must take this step in the House, as directed by our Constitution, in order to establish a precedent that will prevent future Presidents from engaging in similar conduct.

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MEMORANDUM to: Bob Barr, Member, House Judiciary Committee  
 FROM: Jerome M. Zeifman, Former Chief Counsel, House Judiciary Committee  
 (1973–1974)  
 DATE: November 18, 1998  
 SUBJECT: Memorandum of Law and Facts on Bribery as an Impeachable Offense

PREFACE

As described in chapter 18 of my book, "Without Honor: The Impeachment of President Nixon and the Crimes of Camelot," in the summer of 1974 the House Judiciary Committee reported out three articles of impeachment. As characterized by then-Committee member William Hungate, the drafting of the articles was "[a] distillation of the thought of many members from many areas, and of differing philosophies."

As I also described in chapter 18, the actual drafting of the articles was done by two drafting teams of the members themselves. One team was comprised of Democrats, headed by Representative Jack Brooks of Texas and Don Edwards of California. The other was referred to in the press as the "Swing Seven" and was comprised of three conservative Democrats from the south, and three moderate Republicans. Although in my book I gave the members of both groups credit themselves as the draftsmen, Tom Mooney (your present General Counsel) was the drafting counsel for the Swing Seven, and I the drafting counsel for the Democrats.

Tracking the language and format of the Nixon articles as closely as possible, I am submitting for your consideration the text of my recommendations for a proposed Article of Impeachment against President Clinton for bribery, which follows:

BRIBERY

*In his conduct of the office of President of the United States, William J. Clinton has given or received bribes with respect to one or more of the following:*

- (1) Approving, condoning, or acquiescing in the surreptitious payment of bribes for the purpose of obtaining the silence or influencing the testimony of Webster Hubbell as a witness or potential witness in criminal proceedings;*
- (2) Approving, condoning, or acquiescing in the use of political influence by Vernon Jordan in obtaining employment for the purpose of obtaining the silence or influencing the testimony of Monica Lewinsky as a witness or potential witness in civil or criminal proceedings; and*
- (3) Approving, condoning or acquiescence in the receipt of bribes in connection with the issuance of an executive order which had the effect of giving Indonesia a monopoly on the sale of certain types of coal.*

LEGAL AUTHORITY

Currently, the federal bribery statute, section 201 of the Criminal Code (Title 18), reaches the giving, receiving or acceptance of anything of value for contemplated acts by public officials or witnesses in judicial or congressional proceedings as well as for acts already performed. The essence of the offense is the giving, solicitation or receipt of the bribe. The giving, solicitation or receipt may be accomplished

through an intermediary who need not be a public official. Conspiracy to commit bribery may be a separate criminal offense (18 U.S.C. 371).

The crime of bribery consists of the voluntary giving or receipt of benefits in corrupt attempts to influence the actions of public officials or testimony of witnesses. The crime is completed on the giving, solicitation or receipt of the bribe itself, and there need be no delivery of the “quid pro quo” in order to convict.

Under section 201 it is not necessary to show the official or witness who gave, solicited or received the bribe possessed criminal intent. Under a series of Supreme Court decisions, to obtain a conviction, it is only necessary to show the official or his intermediary or the witness gave, solicited, received or agreed to receive something of value with knowledge that the donor was compensating him or her for an official act or for testimony (or, non-testimony) as a witness in a judicial or congressional proceeding.

More recent decisions of the Supreme Court have imposed even stricter prohibitions on public officials than those in existence at the time of the Nixon impeachment inquiry. In its 1992 opinion, *Evans v. United States*, the Court interpreted section 1951 of the criminal code (the Hobbs Act), holding:

Passive acceptance of a benefit by a public official is sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power. The official need not take any specific action to induce the offering of the benefit. [HE483]

In my view—based on several centuries of impeachment precedents which I analyzed and published as Chief Counsel to the House Judiciary Committee during the Nixon impeachment inquiry, as well as Supreme Court decisions relating both to bribery and the complicity of government officials in the abuse of political influence—there is now clearly sufficient evidence already on the public record to impeach President Clinton for giving and receiving bribes. My understanding of the facts already on the public record follows.

#### FACTS

##### *Bribery Involving Whitewater and Webster Hubbell*

When Bill Clinton first ran for President, Whitewater became a national political issue. On March 8, 1992 during the Democratic primary campaign, reporter Jeff Gerth of the *New York Times* revealed the Clintons had received improper loans and filed false income tax returns; claiming deductions for interest they had not paid. During the same period, referring to Bill Clinton as the “scandal-a-week candidate,” former California governor Jerry Brown made similar Whitewater-related charges.

As was later learned by congressional investigators, to help the Clintons respond to inquiries from the press and charges from other candidates, Vincent Foster, Mrs. Clinton’s then-law partner, who was soon to become Bernard Nussbaum’s Deputy White House Counsel, assembled all the information he could on Whitewater. Webster Hubbell, who was then also Mrs. Clinton’s law partner and Bill Clinton’s closest friend, secretly removed the firm’s only copies of files relating to Madison Guaranty as well other as Rose Law Firm clients for whom Mrs. Clinton performed legal services.

The files, which were legally the property of the clients, were removed without the firm’s consent and were later stored in Hubbell’s Washington home after he was appointed Associate Attorney General. In addition, Hubbell and Foster were able to obtain computer print-outs of the Rose Law Firm’s billing records relating to Hillary Clinton’s representation of Madison Guaranty.

The records were later subpoenaed by Independent Counsel Robert Fiske in early 1994, and by the Senate Whitewater Committee in October 1995. But they were no longer to be found. As was noted in the report of the Whitewater Committee: “At every important turn crucial files and documents ‘disappeared’ or were withheld from scrutiny whenever questions were raised.” [HE2 p. 40, 41]

Among Hillary Clinton’s billing records that “disappeared” were those relating to another questionable land deal and loan exchange scheme of McDougal’s, known as Castle Grande. The project benefitted Webster Hubbell’s father-in-law, Seth Ward. In 1988, bank regulators had charged Castle Grande was a “sham” that cost federal taxpayers \$4 million. [HE2 pp. 40, 41]

In 1992 and 1993 Hillary Clinton had denied she had done any legal work for McDougal or Madison. In April 1994 it was learned some of the Rose Law Firm Whitewater-related documents had been shredded. When asked by reporters what she knew about the shredding, Mrs. Clinton said: “Nothing . . . [It] didn’t happen, and I know nothing about any other such stories . . . Absolutely not.”

In May 1995, Mrs. Clinton provided federal investigators written responses under oath. She denied any knowledge of Castle Grande, stating she had “no recollection” of doing legal work for Seth Ward. [HE2 pp. 40, 41]

In January 1996, the First Lady admitted in written answers to federal banking officials that in 1988—the year in which regulators first began investigating Castle Grande—she had ordered the shredding of three Castle Grande files, stating: “It appears that I cooperated with this effort [to dispose of the files].”

As for the files that had not been shredded, Hillary Clinton was eventually to state through her attorney she “may have” reviewed them during the 1992 campaign, but denied any knowledge of their whereabouts. Hubbell was later to testify he last saw the records during the 1992 presidential campaign in the possession of Vincent Foster.

On July 17, 1993 Foster was found dead in Washington’s Fort Marcy Park and had apparently committed suicide. On the same day in Little Rock, the FBI had obtained a warrant to search the office of David Hale as part of its investigation of Capital Management Services, the company through which Hale had loaned Susan McDougal \$300,000 at the request of James McDougal and then-governor Clinton.

Following the discovery of Foster’s body, White House Counsel Bernard Nussbaum initially promised Deputy Attorney General Philip Heymann and Justice Department investigators full access to the files in Foster’s office. However, the First Lady insisted investigators be denied “unfettered access” to Foster’s files. After talking to one of Hillary Clinton’s closest advisers, Susan Thomases, Nussbaum reversed himself, renege on his promise to the Justice Department, and began to impede the investigation.

Request by the Justice Department and Park Police to seal-off Foster’s office were ignored, giving White House aides an opportunity to remove some of Foster’s files. Nussbaum also asserted he alone would first examine Foster’s files and decide which documents to make available to Justice Department investigators. He also asserted as White House Counsel he would be present at interrogations of witnesses by the FBI and the police.

Congressional investigators learned that after Nussbaum had initially searched Foster’s brief case he had declared it empty. Later one of Nussbaum’s aides purportedly searched the brief case and found torn-up pieces of a note by Foster expressing bitterness about his life in Washington. When Nussbaum met with investigators and produced an envelope containing the pieces of the note the pieces fell out of the envelope on to the floor.

Nussbaum and the White House soon clashed with Deputy Attorney General Heymann, who later quietly resigned to return to a teaching position at the Harvard Law School. Later, in sworn testimony to the Senate Whitewater Committee Heymann said he had objected to Nussbaum’s conduct and asked him, “Bernie, are you hiding something?” Heymann also testified that, because of the obstruction of the investigation, he warned the Clinton White House of a “major disaster brewing.”

Heymann had argued Nussbaum “should not decide . . . alone” which papers in Foster’s office could be reviewed by authorities, and that “White House lawyers should not sit in on interviews of witnesses.” Explaining that “the player with significant stakes in the process cannot be a referee.” Heymann testified he was “very angry and very adamant” in telling Nussbaum that career Justice Department officials should review the documents.

As congressional investigators continued to probe events related to Foster’s death, they learned that in 1993 to Clintons were aware of a pending criminal investigation of McDougal’s Madison Bank by the Resolution Trust Corporation, a federal regulatory agency that named Arkansas Governor Jim Guy Tucker as a target and the Clintons as witnesses to, and beneficiaries of, illegal actions. [3/roadmap]

Foster was engaged in preparing responses to expected Whitewater questions. He was also given the responsibility for the preparation of the Clintons’ tax returns for 1992 to reflect properly the sale of their shares in Whitewater.

Congressional investigators were also able to obtain evidence that Nussbaum was not alone in searching Foster’s unsealed office on the night of his death. Others included President Clinton’s aide Patsy Thomasson, and Margaret Williams, Mrs. Clinton’s Chief of Staff. Although each denied under oath they had removed any documents, Ms. Williams’ testimony was contradicted by a Secret Service agent who testified he saw her leave Foster’s office on the night of his death with a stack of thick file folders.

Five days after Foster’s death Nussbaum, without preparing an inventory, turned over a number of files to Ms. Williams who transferred them to the White House residence. In the ensuing effort to obtain the missing files, a number of subpoenas were issued by congressional committees and independent counsel Kenneth Starr. Under subpoena to produce her billing records relating to the Madison Bank, Mrs.

Clinton stated through her personal counsel she “may have” seen them during the 1992 campaign but did not know their present whereabouts.

In August 1995 the missing billing records were eventually found by presidential aide Carolyn Huber, in the “book room” next to Mrs. Clinton’s office in the White House residence. Mrs. Huber was later to testify she did not realize what they were until she looked at them again five months later in sorting out several boxes of documents in her office. It was not until January 1996—two years after they were first subpoenaed—that the billing records were turned over by personal counsel for the President and Mrs. Clinton. Mrs. Clinton then denied knowing how the records got to the book room, where access was limited mostly to the Clintons and several selected friends.

The billing records contain handwritten notes and questions to Mrs. Clinton from both Foster and Hubbell. They also contradict public statements and sworn testimony by Mrs. Clinton that she had done little or no legal work for Madison and had no knowledge of Castle Grande. The records show she billed Madison for at least 60 hours of legal services over 15 months, had numerous meetings, with Hubbell’s father-in-law, Seth Ward, and talked with Ward on the phone at least 14 times.

The complicity of Hillary Clinton, Nussbaum, and other aides to the President in the obstruction of the investigations of Whitewater by Congress and the independent counsel now has a sad irony. Twenty years earlier on the House Judiciary Committee’s impeachment inquiry staff, both Hillary Rodham and Bernard Nussbaum were aware the role of Nixon’s White House counsel, John Dean, in the cover-up of Watergate was a basis for charging Nixon with an impeachable offense.

In 1972, following the arrest of Watergate burglar Howard Hunt and others, John Dean alone had personally examined the contents of Hunt’s White House safe, and had sat in on the interrogation of witnesses by the Justice Department. For his acts, Dean was charged with the felony of obstructing justice and served a prison term. In 1993, as Dean’s successor, Nussbaum similarly interposed himself between the Justice Department’s investigation of the files in the White House office of Vincent Foster.

At the time of Watergate, Nussbaum and Hillary Rodham were aware that for his complicity in Dean’s acts and those of other White House aides, President Nixon was charged with an impeachable offense by the House Judiciary Committee and named as an “unindicted co-conspirator” by Watergate special prosecutor Leon Jaworski. They were also aware of the legal principles of complicity relied on both by the Judiciary Committee and by Watergate prosecutor Jaworski. Under those principles, if the President establishes a policy of obstructing investigations, he becomes accountable for the acts of his aides in the pursuit of that policy.

Under the same principles, President Clinton now warrants impeachment for bribery; as well as for the cover-up of Whitewater by Bernard Nussbaum, Hillary Clinton, other White House aides, and the President’s best friend, Webster Hubbell. As concluded in the 650-page final report of the Senate Whitewater Committee released on June 18, 1996:

By the time of Vincent Foster’s death in July 1993, the Clintons had established a pattern of concealing their involvement with Whitewater and the McDougals’ Madison Guaranty S&L. The actions of senior White House officials and other close Clinton associates in the days and weeks following Mr. Foster’s death . . . were but part of a pattern that began in 1988 of concealing, controlling and even destroying damaging information concerning the Whitewater real estate investment and the Clintons’ ties to James and Susan McDougal and the Madison Savings and Loan. Indeed, at the time of Mr. Foster’s death, the Clintons and their associates were aware that the Clintons’ involvement with Whitewater land deal, the McDougals, and the Madison S&L might subject them to civil liability and even criminal investigation.

In 1997, further evidence came to light that was also reminiscent of the Nixon impeachment proceedings. Based in part on the arrangement by White House aides of payments of “hush money” to Howard Hunt and other Watergate burglars, the first article of impeachment adopted by the Judiciary Committee at the time of Watergate, charged President Nixon with nine offenses, two of which included:

Approving, condoning, and acquiescing in the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses, or individuals who participated in . . . illegal activities; and

Making false or misleading public statements for the purpose of deceiving the people of the United States into believing that . . . with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Re-election of the President and that there was no involvement of such personnel in such misconduct.”

Similarly, there is now compelling evidence that, after Webster Hubbell resigned as Associate Attorney General to face criminal charges of fraud, President Clinton also acted through White House aides to arrange payments of “hush money” to Mr. Hubbell. There is likewise persuasive evidence that to deceive the public, President Clinton has made false statements.

Early in 1994, then-Whitewater Independent Counsel Robert Fiske discovered Hubbell had overbilled his clients at the Rose law firm \$482,410, and that he owed \$143,437 in unpaid federal income taxes. [HE2 p. 24] Initially, it was reported that in the nine months between his resignation and his guilty plea, Hubbell received payments of \$400,000, of which \$100,000 came from the Riadys. Later, House investigators found evidence that Hubbell received \$1 million or more, of which \$300,000 came from the Riadys.

When the first reports of the Riady payments to Hubbell appeared in the press in January 1997, President Clinton was asked at a White House news conference whether he found the Riady payment unusual or suspicious, and what steps he had taken to find out whether it had been hush money. His response was:

I can't imagine who could have ever arranged to do something improper like that and no one around here knew about it. We did not know anything about it, and I can tell you categorically that did not happen. I knew nothing about it. None of us did before it happened. I didn't personally know anything about it until I read about it in the press.” [HE2 pp. 26, 27; 3/roadmap]

On April 3, 1997, again commenting on White House knowledge of payments to Hubbell, President Clinton stated:

Let me remind you of the critical fact. At the time that it was done, no one had any idea about whether any—what the nature of the allegations were against Mr. Hubbell or whether they were true. Everybody thought there was some sort of billing dispute with his law firm. And that's all anybody knew about it. So no, I do not think they did anything improper.

Several days afterwards, in a radio appearance Hillary Clinton stated that in resigning Hubbell had assured her and the President he had done nothing wrong, and that “at the time we had no reason to disbelieve his denials of wrongdoing.” Later, the public record was to include clear and convincing evidence the statements of the President and the First Lady were lies.

It was later learned that after he resigned to face criminal charges Hubbell visited the White House on March 18, 1994. He had a private meeting with Hillary Clinton in the White House in July 1994. He also met at least 17 times with Associate White House Counsel William Kennedy, another former partner in the Rose Law Firm.

In the summer of 1994, Hubbell made at least two trips to Camp David to visit the Clintons and had a golf match with the President and Texas oil man Truman Arnold, who made a payment to Hubbell during that period. He also met frequently with Gerald Stern, who was then in charge of the division of the Justice Department responsible for prosecuting financial institution fraud, and who later told the *Washington Post* his meetings with Hubbell were “strictly social.”

By May 5, 1997, the evidence the President had lied about his knowledge of the payments to Hubbell was already so compelling the *New York Times*—which had long tended to defend the Clintons against charges of wrong doing—published an article by its editor, A.M. Rosenthal, stating:

It [is now] impossible for me to believe it happened the way President Clinton and his wife said it had. I [have] rejected, for myself, the story . . . that neither they nor anybody else at the White House knew that when their good friend Webster L. Hubbell resigned as Associate Attorney General in 1994 he was facing the likelihood of criminal accusations that could land him in jail. They did.

If the President did know, then after the resignation he opened himself to possible charges of obstructing justice by approving White House job-hunting for Mr. Hubbell. It would not take a particularly suspicious mind—

let alone a prosecutor's—to see high-paying jobs as hush money to keep a defendant silent. Why would he take that risk?

In [this] paper Jeff Gerth and Stephen Labaton of the *New York Times* Washington bureau reported that before Mr. Hubbell resigned, David E. Kendall, the personal lawyer of the Clintons, and James B. Blair, one of their closest Arkansas confidants, received certain information from the Rose Law Firm in Little Rock. . . . The information was that the firm had “pretty strong proof of wrongdoing” by Mr. Hubbell while he was a partner. The *Times* account said Mr. Blair then warned the Clintons that Mr. Hubbell had to resign, fast. Mr. Kendall was also involved in getting the resignation.

Until the *Times* report, I found it hard to believe the Clintons would take the risk of an obstruction of justice charge, the accusation that led to Richard Nixon's resignation—and down the same road of stonewalling.

And like most Americans. I think, I was and remain sick at the thought of the damage to the U.S. of the destruction in office of another Presidency.

The facts cited in the *New York Times* article were but a small portion of the evidence of obstruction of justice and false statements by the President. Congressional investigators and reporters have also amassed other compelling evidence, much of which the White House has subsequently confirmed.

The White House eventually acknowledge that a campaign to give employment to Hubbell while criminal charges were pending against him was mounted by: Thomas F. McLarty, then Mr. Clinton's chief of staff; Mickey Kantor, then the U.S. Trade Representative; Erskine B. Bowles, then head of the Small Business Administration; Vernon Jordan, a Washington lawyer and close friend of President Clinton; and Truman Arnold, a Texas business man who is also a long-time friend of the President.

The White House also admitted that in March 1994, President Clinton and Mrs. Clinton met with their advisers to discuss Hubbell's legal troubles and impending resignation. In later describing the meeting McLarty stated he told Mrs. Clinton, “I'm going to try and help Webb.” He also stated he remembered “saying something to the President to the same effect.”

Investigators also discovered a written “task list” prepared by then-White House Special Counsel Jane Sherburne, assigning a team of government lawyers to “monitor his [Hubbell's] cooperation with Independent Counsel Kenneth Starr.” It was also learned that after Hubbell's resignation Martha Scott, a White House aide and long time friend of President Clinton, kept in close touch with Hubbell. In addition, other White House aides closely monitored news reports and other available information relating to Hubbell's prosecution. By June 1994, Hubbell reportedly was cooperating with the prosecutors. However, in late June he changed his policy and began withholding Whitewater-related documents and personal financial records.

During the same period in which Hubbell stopped cooperating, with the prosecutors James Riady had responded to a White House request to provide financial support for Hubbell. Secret Service records later obtained by investigators show he visited the White House every day from June 21st to June 25th, and saw President Clinton at least twice. On June 23rd, Riady had a breakfast meeting with Hubbell and then visited the White House. Later that day Hubbell and Riady then had a midday luncheon meeting at Washington's Hay-Adams Hotel.

On Monday, June 27th, the first day of the new work week after Riady had visited Clinton, a Riady company, Hong Kong China Ltd., sent Hubbell \$100,000. Hubbell had initially been expecting four quarterly installments of \$25,000, but after Riady's meetings with Hubbell and the President, Riady decided to accelerate the payment into a lump sum.

The next weekend, the Fourth of July holiday, the President and the First Lady went to Camp David and asked Hubbell to join them, as was later confirmed by the White House. According to Hubbell, “The president asked me if I'd done something wrong, and I didn't tell him the truth.” [AP] On Tuesday, July 5th, Hubbell wrote to one of Riady's top executives in Hong Kong, acknowledging the \$100,000 he had received the previous week. [3/Hubbl5.nyt]

In December 1994, Hubbell pleaded guilty to fraud and tax charges. Although he had previously entered into a plea bargain agreement to cooperate with the White-water prosecutors, at his sentencing prosecutors took no steps to have his sentence reduced—presumably because of his lack of cooperation. Prosecutors have been reportedly frustrated by Hubbell's inability to recall transactions involving Mrs. Clinton's role as a lawyer with Madison Guaranty Savings & Loan. [3/roadmap]

In the spring of 1995, a few months after his fraud conviction, at a dinner at Washington's Palm Restaurant, Hubbell and his wife asked Mark Middleton, a recently retired White House aide, whether the Riady family would be keeping him

on its payroll even as he faced prison. According to Robert Luskin, Middleton's lawyer, Middleton told the Hubbells to take their question to the Riady family itself or to John Huang, who was then a trade official at the Commerce Department. It is not known whether Hubbell ever followed up on Middleton's suggestion.

During the nine months between his resignation and his guilty plea, Hubbell received a total of more than \$500,000 from a dozen enterprises, many of which were controlled by Clinton associates or major Democratic donors. In that period, White House chief of staff McLarty had talked to Truman Arnold, a leading fund-raiser for the DNC about hiring Hubbell. According to the *New York Times*, Arnold paid Hubbell an undisclosed sum to help arrange a dinner party for top fund-raiser. President Clinton attended the dinner.

Arnold also helped persuade three other Texans to hire Hubbell: Bernard Rapoport, an insurance executive, who paid Hubbell \$18,000; Wayne Reaud, a lawyer; and C.W. Conn Jr., an appliance store owner. [gerth] During the same period, Hubbell was also hired at a salary of \$8,500 per month for five months to do lobbying work for the Los Angeles Airport Commission, a job that put him in frequent contact with another top White House aide, John Emerson. [gerth; HE2 p. 25]

Hubbell was likewise employed by the Consumer Support and Education Fund, a nonprofit Los Angeles foundation that paid Hubbell \$45,000 to write essays on the ethics of public service, which Hubbell never wrote. After the payments were disclosed, Hubbell returned the money. [HE2 p. 25]

While he was still under indictment, the Sprint Corporation hired Hubbell in November 1994 at a salary of \$15,000 per month to help win federal approval for a European venture. According to Sprint official Bill White, Hubbell was paid "less than \$90,000" in total. At the same time, in possible violation of American Bar Association rules against conflicts of interest, Hubbell was also employed by Pacific Teleis, a competitor of Sprint, for undisclosed duties and compensation. [HE2 p. 25] The Time-Warner corporation likewise hired Hubbell.

The Mid-America Dairymen Association—whose political action committee contributes heavily to Democratic candidates—also hired Hubbell for unknown duties and compensation. The association's spokesman, Dan Reuwee, has told the *Los Angeles Times* that it is "nobody's business what we hired him for." In addition, Sun America, Inc., a California financial services company run by Eli Broad, a friend of President Clinton, paid Hubbell an undisclosed sum to help promote a national retirement savings policy. [HE2 pp. 25, 26]

While under indictment Hubbell also received other benefits from other persons with close ties to the Clinton White House. [HE2 p. 25] Michael Cardozo, executive director of the Presidential Legal Expense Trust, arranged to provide Hubbell with office space and a receptionist. In addition, former U.S. Trade Representative Mickey Kantor persuaded the Federal National Mortgage Association to hire Hubbell's son, Walter.

As was later confirmed by the White House, Clinton administration official Erskine Bowles contacted still another company, Allied Capital Corporation, to hire Hubbell. At the time of the contact, Bowles was head of the Small Business Administration, which licensed Allied and had regulatory authority over the company. In 1997, Bowles became White House Chief of Staff.

Faced with incontrovertible evidence that administration officials had solicited payments to Hubbell from a number of companies regulated by the federal government, President Clinton abandoned his earlier denials of January 1997. By the Spring of 1997 he no longer denied "categorically" that they had been solicited by anyone at the White House; and no longer characterized such payments as "improper." Instead, when asked again about the solicitation by his key aides of financial help for Hubbell the President's explanation became:

From what I know about them, they were just—they were people who were genuinely concerned that there was a man who was out of work who had four children. And I understand it, they were trying to help him for no other reason than just out of human compassion. [Seper, WT, April]

Even if President Clinton were correct that the solicitations by government official of payments to Hubbell were made out of compassion, such solicitations would nevertheless be improper. Since the persons and firms solicited were subject to regulation by the Clinton administration, each official had conflicts of interests, and participated in an unethical, if not criminal, act.

That the solicitation of payments to Hubbell were the culmination of prolonged White House efforts to conceal evidence relating to Whitewater, provides even more compelling reasons for the impeachment of President Clinton. After the death of Foster, Hubbell was singularly in possession of evidence of wrongdoing by the Presi-

dent and Mrs. Clinton dating back to Arkansas; some of which still remains concealed.

Just as Congress and the public was never to learn all the facts related to Watergate, so too the cover-up of Whitewater by President Clinton and his key aides may well remain at least partially successful. Yet, as in the case of President Nixon, there is now more than sufficient evidence on the public record to sustain an article of impeachment against President Clinton for the obstruction of justice.

*Bribery Involving Monica Lewinsky*

Based on the same legal authority described above, in my view the facts alleged in Independent Counsel Kenneth Starr's referral to the Congress are substantial evidence that in approving acquiescing and condoning the use of political influence by Vernon Jordan to obtain employment for Ms. Lewinsky, President Clinton has committed the impeachable offense of bribery as well as obstruction of justice.

*Bribery of President Clinton by Asian Interests*

Of the more than \$3 million of illegal or questionable campaign contributions that were refunded after the 1996 elections, most came from foreign donors with financial ties to Asian countries. There is compelling evidence on the public record of bribery with respect to a variety of policy decisions by the President which were influenced by campaign contributions. One example relates to contributions from the Riady family [2/lippo.lim], which was also involved in the payment of "hush money" to Webster Hubbell.

Under the umbrella of the Lippo Group, the Riady family owns mining rights to Indonesian deposits of so called "clean-burning coal." The Indonesian coal has sufficiently low sulfur content to meet strict environmental standards promulgated during the Clinton administration by the Environmental Protection Agency. The Indonesian deposits of environmentally safe coal are the second largest in the world.

The world's largest deposits of such coal are in the United States. They are located in southern Utah, include more than 62 billion tons of coal, and are estimated to have a value of \$1.2 trillion. On September 18, 1996, six weeks before the presidential election—under circumstances suggestive of influence by Riady—President Clinton signed an executive order converting 1.7 million acres in southwestern Utah that contain the coal into a park area the size of Connecticut. This was the "Grand Staircase Escalante National Monument."

A few weeks after the signing of the executive order, a person inexplicably identified as an unemployed gardener, gave the Clinton campaign \$400,000. It was not until the President's reelection that the Democratic National Committee promised to refund the money; after it was revealed it had come from Arief Wiradinata and his wife Soraya, whose father is an executive of the Lippo Group. [verify, get dates, etc.]

At a televised press conference in Utah six weeks before his election, President Clinton proclaimed the need to preserve the natural beauty of the remote area, describing it as a "beautiful, exotic place." By election time the only published report suggesting the President's concerns might have been other than aesthetic appeared in an obscure mining newsletter, in which an unknown reporter, Susan Foster, wrote:

With a stroke of his pen he wiped out the only significant competition to Indonesian coal interests in the world market.

On election day 1996, the public was still unaware the President's order permanently prohibited the mining of the most high quality clean-burning coal in the world, and gave the Riady family's Indonesia-based Lippo Group a world-wide monopoly on the sale of such coal. It was not until after the President's re-election that an Associated Press reporter, Karen Gullo, was the first to break the story in the national media. In an article published December 26, 1996, Ms. Gullo noted that "Jakarta-based Lippo corporation has business interests related to coal" and that in signing the Executive Order in Utah the President "dashed plans to tap a huge reserve of environmental-friendly coal." [3/coal.wt 3/coal2; 3/coal3]

Subsequently, the public record became replete with evidence that the signing of the executive order by the President was influenced by the financial and political support of the Riady and the Lippo Group, which had previously contributed illegally more than \$1.5 million to his campaign.

Environmentalists and local residents of the area who had long urged protection for some lands in Utah dispute that the selection of the site specified in the executive order was to preserve "a beautiful and exotic place." According to environmentalists, members of the Western States Coalition, and local residents, ordinary desert land with no significance or unique natural features was included in the

order solely to prohibit mining of the coal deposits; while other important environmental sites that the local residents wanted protected were left outside the 1.7 million acre park. [3/coal2]

The President's decision to issue the order was made without prior consultation with Utah Governor Michael Leavitt or any members of Utah's congressional delegation. It stunned Utah's lone congressional Democrat, Bill Orton, in whose district the clean-burning coal is found. It also came as a shock to Louise Liston, the commissioner from Escalante County, who asked:

President Clinton has locked up a treasure house that could be used for our children and to boost our economy. Why he would want to do that: we don't know. Why would he put our nation at risk? [also HE 6/18/97 p. 5]

The adverse effects of the executive order on the economy are multiple and staggering. It has been estimated that \$20 billion in federal revenue from mining Utah coal will never be realized. The 62 billion tons of coal now locked permanently in the Utah desert land would provide enough environmentally safe coal to keep non-nuclear Utah power plants running for another 400 years. Coal mining, as a source of revenue and power for Utah, is virtually shut down and jobs that would have been available in coal mining no longer exist.

Of particular concern to local educators and officials such as County Commissioner Liston, President Clinton's order cuts off major sources of revenues traditionally relied on to fund public education. When Utah was admitted to the Union, portions of the vast federal lands in the new state were placed permanently in trust to provide funds for education. In the words of County Commissioner Liston:

When Utah became a state, under the enabling Act, the government allowed them four sections out of every township so that when they have all these federal lands, that school kids would not be left without some way of funding the schools. So they allowed those four sections out of every township to be trust lands.

Particularly distressed by the effects of the executive order on local schools that could no longer obtain revenues from mining, County Commissioner Liston added:

We're still kind of reeling from the effects of it, and sincerely feel like he has no idea what he has laid upon two counties in Southern Utah.

President Clinton's general response to environmentalists and government officials who were shocked by his executive order ignored the unique nature of the environmentally safe coal at the Utah site. Giving the impression that similar coal was available elsewhere in the United States, he said:

I am concerned about a large coal mine proposed for the area. Mining jobs are good jobs and mining is important to our national economy and to our national security. But we can't have mines everywhere and we shouldn't have mines that threaten our national treasures.

Respecting the concerns of Commissioner Liston and educators in Utah on the adverse effect on local schools, President Clinton has promised to trade the school trust land within the monument with comparable land in other parts of Utah, stating:

I will say again—creating this national monument should not and will not come at the expense of Utah's children.

That it is a promise he cannot keep, is indisputable. In that regard, the official who heads the project tasked with finding comparable land has stated:

We can't find enough coal, in Utah, to compensate for the school trusts, and if we start adding oil and gas fields, other mineral deposits, we still have a tough time finding enough federal resources in the entire state of Utah to trade for just the school children's coal within the monument, let alone their other resources.

In June 1997 the Schools and Institution Trust Lands Association of Utah, which manages the trust fund, filed a lawsuit against the Clinton administration charging the executive order is illegal. In a separate lawsuit the Utah Association of Counties has claimed the executive order exceeds the powers granted to the President under the 1906 Antiquities Act, which was first used by Theodore Roosevelt to set aside the Grand Canyon as a national monument. The lawsuit also charges President Clinton violated the National Environmental Policy Act and the Federal Land Management Policy Act, which require him to consult with state officials and obtain the approval of Congress; procedures he avoided. [HE 7/18/97 p. 5]

That President Clinton may have simply made an unwise policy decision that has adverse economic effects on our economy is not, in itself an impeachable offense, even though Congress is not bound by the rules of evidence applied in the criminal courts. [See, *Selected Materials*, etc.] However, even if Congress were to comply with criminal rules of evidence, the fact that President Clinton signed the executive order under such questionable conditions is substantial circumstantial evidence that the Escalante National Monument is a “quid pro quo” related to the receipt of illegal campaign contributions from the Riadys, the Lippo Group, and others with financial interests in Indonesia.

More and more as President Clinton’s fund-raising tactics have become exposed, he has asserted what is at best a political defense. He has blamed “the system.” Arguing that the election laws enacted after Watergate have created a corrupt system, some of the President’s defenders now refer to campaign contributions as “legalized bribery.” [NY Times Editorial, 4/9/97]

To suggest even metaphorically that President Clinton could legally receive bribes, overstates the case for fund-raising reform and trivializes the meaning of the term “Bribery” in the Constitution, which holds the President to a much higher standard than those spelled out under the election laws. As an act punishable only by removal from office and not by a fine or imprisonment, the Impeachment Clause was intended by the Founding Fathers to make it much easier for Congress to impeach a President for bribery than to convict a public official of bribery as a felony.

#### *Constitutional History*

In 1787 the Founding Fathers had compelling reasons, based on English precedents, for defining “Bribery” as a specific “High Crime.” For several centuries under the English common law, bribery was among the highest crimes against the state (as was Perjury). [R. Berger, *Impeachment*, p. 62 *et seq.* 1973] At the very time the U.S. Constitution was being drafted, impeachment charges brought by Edmund Burke against King George III’s minister, Warren Hastings, for both giving and receiving bribes from political leaders in India were pending in the House of Lords. Our Founding Fathers who previously had their own grievances against George III, noted Burke was chastising Hastings for giving the King a reputation as “head of a robber band.”

Also in the minds of the Founding Fathers, and noted in Madison’s journal of 1787, was the bribery of George III’s predecessor. Madison wrote:

One would suppose that the King of England would be well secured against bribery. He has as it were [the ownership of] a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. [*Selected Materials on Impeachment*, 93rd Cong. Committee Print, House Judiciary Committee, pp. 6, 11]

Recalling that Charles I and other earlier corrupt kings had been beheaded, Alexander Hamilton noted that, in imposing no more punishment than the removal from office, the Madison-drafted Impeachment Clause “[s]ubstituted the gentle majesty of the law for the swift justice of the sword.”

In his journal, Madison reiterated several times the concern of the founders, a future president might “betray his trust” through bribes. Explaining why Bribery as a *High Crime* had even more applicability to the President than to Members of Congress, he wrote:

The case of the Executive Magistracy was very distinguishable from that of the Legislative . . . It could not be presumed that all or even a majority of an Assembly would be bribed to betray their trust . . . And if one or a few members only should be seduced the soundness of the remaining members would maintain the integrity and fidelity of the body . . . In the case of the Executive Magistracy which was to be administered by a single man, corruption was more within the compass of probable events, and might be fatal to the Republic.” [*Selected Materials on Impeachment*, 93rd Cong. Committee Print, House Judiciary Committee, pp. 3-7]

The constitutional standard for impeachment for Bribery as a “High Crime,” like all other “High Crimes,” does not require the commission of a felony; or proof of guilt beyond a reasonable doubt. Just as the standard imposed for Nixon’s impeachment by the House Judiciary Committee was not based on the commission of a felony by the President himself, so too in 1989 the Committee relied on precedents that were more than 200 years old to bring impeachment charges for the High Crime of bribery against Judge Alcee Hastings, whose namesake, Warren Hastings, had been impeached for Bribery by Edmund Burke in the 18th century.

In 1983 Judge Hastings, who had been appointed by President Carter, was acquitted by a Florida jury of charges he had received a bribe of \$150,000. In 1989, based on the same charges, he was impeached by the House, convicted by the Senate and removed from office.

#### CONCLUSION

Just as the House Judiciary Committee voted to impeach President Nixon—and later Judge Hastings— for offenses that fell short of felonies, but which clearly involved evidence thereof, so too the current House of Representatives now has the authority to impeach President Clinton for Bribery as a High Crime without proof beyond a reasonable doubt. Moreover, it can, again similar to criminal cases, do so based on logical inferences from compelling circumstantial evidence.

Impeachment of a President is a civil remedy and not a criminal one. As exemplified by the impeachment of Judge Hastings—and even more dramatically by the successful case against O.J. Simpson—the evidentiary standard of proof in civil proceedings is much less stringent than the beyond-a-reasonable-doubt standard applicable in our criminal courts. In the case of President Clinton, in constitutional terms, there is substantial evidence that he should be impeached for “Bribery” and “other high Crimes and Misdemeanors.”

Mr. BARR. I would respectfully ask that you do take a look at it, because Mr. Zeifman raises a very interesting question, and that is something also that you touched on in your written testimony, and that is bribery.

Under 18 USC 201, which you are very familiar with, one I think could very legitimately make the case that with regard to the Webb Hubbell payments of several hundred thousands of dollars involving—including from foreign sources, which is part of the pattern of activity that you talked about earlier, and which we see also in what appears to be an effort to buy either the silence of Monica Lewinsky, obviously unsuccessful, or her offering a job to have her shave her testimony in some way, is it not correct that if you do look at 18 USC 201, which is the bribery statute, that it would appear that many of the allegations concerning the payoffs and the evidence relating thereto could fall within 18 USC 201, and could also form the basis for an impeachment article?

Mr. STARR. Well, again, we have given you our legal assessment, and I know that prosecutors and obviously Members of Congress can look at the law. We have not taken it through an analysis with respect to the bribery statute, and I think I should, if you would permit me to do that, withhold judgment in terms of the legal analysis so that I am not making an off-the-cuff statement, notwithstanding my familiarity with the statute, in light of the various elements of the offense—or set forth in the bribery statute. But I do think that at a minimum, very serious questions are raised that are now here for you to evaluate in your own way.

Mr. BARR. And this would also go to the——

Mr. HYDE. The gentleman’s time has expired.

Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Mr. Starr, you consider yourself a prosecutor now, don’t you? You don’t consider yourself an Independent Counsel?

Mr. STARR. Um, I have never prosecuted——

Mr. DELAHUNT. No, but I am saying in your current capacity, you consider yourself a prosecutor.

Mr. STARR. We have to—that is certainly an important dimension of——

Mr. DELAHUNT. Thank you. I want to get to another question, and you can see how the time is so limited, and I will try to be brief.

I think it was Mr. Canady who talked about due process, and I dare say everyone in this room today is concerned about due process. My colleague from Massachusetts talked about the fact, and it is a reality, and I think it is important that the American people understand that the witnesses that you dealt with, none of them were subject to cross-examination, and you know that because you are a prosecutor, and because you have—and you have referenced them many times today—career prosecutors in your office. So that in terms of their credibility, their memory, it has never been tested in an adversarial fashion. And you know, that really is a concept that is embedded in our American jurisprudence. Would you agree with that?

Mr. STARR. Absolutely. Cross examination is very important.

Mr. DELAHUNT. One other reference, I think it was my friend from Virginia, Mr. Goodlatte, who referred to Judge Claiborne being removed from office because of—and I think it was the chairman himself who elucidated for us, it was as a result of filing an income tax return under the pains and penalties of perjury, and I think that you agreed with that statement. But I think it is important to remember that this same committee back in 1974, when the laws and articles of impeachment presented before the committee regarding allegations against President Nixon concerning the very same offense, signing a tax return under the pains and penalties of perjury, it was this committee back then that voted against an article of impeachment on that particular matter. I think it is really important that the American people understand that.

So there was a difference. There was a difference.

I am just going to ask you one or two questions here, just to clarify some confusion in my own mind. You referred earlier to a letter dated June 16th that you directed to the editor of the Brill report.

Mr. STARR. Yes.

Mr. DELAHUNT. And on page 7 of your letter you noted that the Brill report stated, and I am quoting you here, “They were also going to try to get Lewinsky to wire herself and get Jordan and maybe even the President on tape obstructing justice.” And I think that’s an accurate reading.

In response, your letter went on to state, and I am quoting, “This is false. This office never asked Ms. Lewinsky to agree to wire herself for a conversation with Mr. Jordan or the President.” And again, I would suggest to you that that is an accurate reading of your letter, and I would hope that you would adopt it. I presume when you wrote that, you took great pains to be accurate, and particularly before you put such an unequivocal statement in writing. Do you stand by that statement?

Mr. STARR. The specific statement on the wiring with respect to the President and Mr. Jordan?

Mr. DELAHUNT. The statement that I just read to you. This office never had—

Mr. STARR. Yes. I don’t have the letter before me, and I am trying to follow it.

Mr. DELAHUNT. Let me read it to you again, and I will read it slowly. "This office never asked Ms. Lewinsky to agree to wire herself for a conversation with Mr. Jordan or the President."

Mr. STARR. Right. Yes.

Mr. DELAHUNT. You stand by that statement?

Mr. STARR. May I elaborate? Yes. What we—may I—these are serious questions, if I could—

Mr. HYDE. You can try, Judge Starr. It is going to be tough. You can try to answer.

Mr. DELAHUNT. If I could just go on, because—

Mr. CANADY. Mr. Chairman, I make a point of order that the witness should be allowed to answer the questions. This drive-by questioning is not right.

Mr. DELAHUNT. I would ask the chairman to allow me to continue.

Mr. HYDE. Well, elementary fairness dictates an opportunity for the witness to answer your complex questions, and I think if you want to be fair, you will let him answer.

Mr. DELAHUNT. I will be fair then, and I would ask the Chair to indulge me again—

Mr. HYDE. I will indulge you for the answer.

Mr. STARR. We explained to her at the Ritz Carlton what a cooperating witness would do. It is my understanding—I was not personally there, but it is my understanding that it was stated at a high level of generality with respect to what cooperating witnesses could be asked to do, and that that was one of the activities that could be included in what a cooperating witness would do, once the witness has been evaluated in terms of her credibility and the like.

Mr. DELAHUNT. So the statement in your letter to Mr. Brill is inaccurate?

Mr. STARR. No. It went with respect to the—and that is why I want to be careful that I understood exactly what the question was. And I hope that I have made clear that we talked at a high level of generality, not—as I understand it, not in a person-specific way with respect to what a cooperating witness would do.

Mr. DELAHUNT. You realize that Ms. Lewinsky's testimony contradicts you.

Mr. STARR. I am aware that there may be other perceptions, but that is what we, in fact, asked—it is my understanding that what we asked her to do was to consider being a cooperating witness, and it was stated by our people at a fairly high level of generality.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman.

Mr. Starr, I would like to thank you for being here, and I would like to thank you for being very patient over a long, difficult day, and I would like to say thanks for laboring diligently on behalf of the citizens of this country for many months at a very difficult task.

Mr. STARR. Thank you.

Mr. JENKINS. For the most part, I would compliment this committee insofar as they have talked about and asked about the Constitution, the law, the facts, and the testimony that surrounds this case. This committee is to be complimented. But there have been

some occasional departures from these subjects, and I do not believe that those departures have necessarily been complimentary of this committee, and so I would like to go back to a line of questioning that Mr. Inglis started.

On page 5 and paragraph 9 of your statement, you said that the President made false statements under oath to a grand jury on August the 17, 1998. As I understood the gentleman's testimony, Senator-elect Schumer agreed with that statement. And I noticed that you, in most of your characterizations of the evidence, you said that the evidence suggests, but in this particular instance you didn't even have that language in. You said that the President made false statements.

Then you voiced an opinion in response to a question by Mr. Inglis that a reasonable person, or a reasonable juror, could find these statements to be material matter under the statute.

Now, I would like to read a statute. It is Title XVIII, section 1621, and I would like to ask you if it is pertinent to this case, and an additional question or two.

It reads in pertinent part, "Whoever, having taken an oath before a competent tribunal that he will testify truly, willfully and contrary to such oath states any material fact, matter which he does not believe to be true is guilty of perjury."

Now, I know it is not your role to determine if a violation of that statute exists or did exist in this case, but let me ask you the same question Mr. Inglis did. Could a reasonable juror find that all of the elements were present in the evidence in this case, and that there had been a violation of that statute?

Mr. STARR. It seems to me that a reasonable juror could, but obviously that would come at the conclusion of proceedings that would be a full trial. But it seems to be based on the evidence that is here, if that were the full body of evidence, that reasonable jurors could so conclude.

Mr. JENKINS. And I understand that we are the reasonable jurors to make that determination in this case.

Mr. STARR. It is your judgment.

Mr. JENKINS. Or at least eventually in the United States Senate that decision is to be made.

Now, there has been some mention and some characterization of the testimony of the 19 distinguished witnesses who appeared before this committee, 19 professors and historians. Did you happen to see or hear, or have you read the testimony of any of those witnesses?

Mr. STARR. Some, but not all.

Mr. JENKINS. Did you hear the characterization on the other side that very few felt that perjury is an impeachable offense?

Mr. STARR. Yes, I did hear that.

Mr. JENKINS. I personally heard differently when I heard those 19 witnesses. My recollection is that an overwhelming majority of them testified that perjury can be, or is, an impeachable offense. Was that your understanding from the testimony that they gave?

Mr. STARR. Well, I did not—I am not sure. The testimony will speak for itself, but I certainly know that certain individuals, such as Professor McDowell with his elaborate common law analysis, did come to the conclusion, based on that history of the common law,

and then the history of the founding of the American Republic, that to him and his scholarship, as in his studies at the University of London, that that was, in fact, clear in common law—which, of course, was transplanted to this country. But I did not have a chance to evaluate all of the 19 individuals.

Mr. JENKINS. Thank you very much, Mr. Chairman.

Mr. HYDE. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman.

The Founding Fathers had infinite choices when they conceived our government. They considered placing impeachment in the realm of the courts, but instead they decided that impeachment should be a political process as well as a legal one; that the House of Representatives was uniquely qualified to deliberate on the removal of an elected President because we would take into account the views of the President's ultimate jury: the people of the United States of America. And make no mistake about it, that jury rendered its judgment loud and clear on November 3rd, and this committee did not listen.

This committee is ignoring the will of the American people, and instead following the lead of this so-called Independent Counsel who has conducted a politically-inspired witch-hunt in search of a crime to justify 5 years and \$40 million of taxpayers' money.

The American people do not approve, Mr. Starr. They know unfairness when they see it. They know injustice when they feel it. They know hypocrisy when they smell it. They know partisan politics when they are the victims of it. In their gut they have figured this thing out, and still this committee does not listen.

Here is what the American people have concluded: The President had an affair. He lied about it. He didn't want anyone to know about it. But he didn't bribe anyone, he didn't obstruct justice, he didn't commit treason, he did not subvert the government. And yet, the committee continues, because, they say, they fear for the rule of law.

But as I listen to the questions of my Republican colleagues today, I did not hear their concern for the rule of law regarding Linda Tripp's illegally recorded phone conversations. I do not hear their concern for the rule of law regarding the illegal leaking of grand jury testimony. And where is their concern for the rule of law about Ken Starr's team denying witnesses their basic and fundamental rights of due process?

How we obtain information and conduct investigations in this country does matter. The President is not above the law, Mr. Starr, and neither are you. That is why I must ask you the following questions about your investigation. And please let me read my four questions before you respond.

On January 16, 1998, do you admit or deny that your agents threatened Ms. Lewinsky with 27 years in prison if she contacted her attorney as she testified? Do you admit or deny that your agents threatened to prosecute her mother if Ms. Lewinsky called her attorney, as she testified? That your agents told Monica Lewinsky that she would be less likely to receive immunity if she contacted her attorney, as she testified? Do you admit or deny that your office threatened Julie Hiatt Steele, a witness in the Kathleen Willey matter, that they would raise questions about the legality

of the adoption of her 8-year-old child unless she changed her testimony?

If you would please, Mr. Starr, in the interest of time, please admit or deny. Have your agents—did your agents threaten Ms. Lewinsky with 27 years in prison?

Mr. STARR. Before I engage in an admission or denial, I would want to see the question, and I would be delighted to receive the question, and then I would then give you a written admission or denial.

Mr. WEXLER. May I make it simple?

Mr. ROGAN. Mr. Chairman, parliamentary inquiry, please.

Mr. HYDE. The gentleman will state his inquiry.

Mr. WEXLER. I assume it is not on my time.

Mr. HYDE. Your time has almost expired, but I will give you another minute.

Mr. ROGAN. It is with respect to the procedures. Perhaps it is only me, but I am finding it very difficult to follow with this pattern of multiple questions being asked, and then inviting multiple answers at once. The answers ought to be in sync with the question, and I would suggest that the better practice would be to follow "question, answer, question, answer."

Mr. FRANK. Point of order, Mr. Chairman. That is not a parliamentary inquiry.

Mr. HYDE. The Chair states that that is not a parliamentary inquiry.

A member who has 5 minutes can ask or assert whatever they want. It is curious that they all use the 5 minutes, we have done it, too, and then Mr. Starr has difficulty answering because there are further interruptions. I don't think this has been at all a fair proceeding. It hasn't been the Chair's fault, but take what time you need to answer the speech of Mr. Wexler.

Mr. STARR. Three of the questions went—and if you ask me in writing, I will be happy to follow up. Three of the questions went to the events of the evening of January 16th. I will say that we conducted ourselves properly and lawfully; that that determination has been made. These issues get litigated in court, and I think, if I could finish, that we conducted ourselves in a proper and professional way, saying that we want the witness to cooperate under the circumstances of her engaging in felonious conduct.

With respect to your fourth question—and that is my response with respect to those.

With respect to the fourth question on Ms. Steele, as I said earlier, I believe that our agents are going about their work in a way that is appropriate to test credibility, to inquire as to areas that, in their professional judgment, go to credibility, but if there are issues with respect to how a particular witness is handled, and I have heard a number of those questions, I think the right thing to do is for the individual, especially one, as Ms. Steele is, represented by counsel, to go to court and say they have been treated unfairly and to see what the remedy is. But for me to try to engage in almost an adjudicatory function here is somewhat odd to take certain selected ones and come to an ultimate

judgment.

Mr. HYDE. The gentleman's time has expired.

Mr. WEXLER. Mr. Chairman, you had indicated that I could have a minute before the other gentleman from California.

Mr. HYDE. Well, don't you consider the time to answer your questions part of your time?

Mr. WEXLER. Mr. Chairman, I sat very diligently—I ask for 15 seconds.

Ms. WATERS. It has been this way all day.

Mr. HYDE. Mr. Wexler, you may have 15 seconds.

Mr. WEXLER. Thank you, Mr. Chairman.

Mr. STARR, I did not ask you about the legality of the actions of your agents. All I asked you was a factual question. Did your agents or did they not threaten Ms. Lewinsky with 27 years in prison? It is either yes or no, not the legality.

Mr. STARR. I do not—I know what Ms. Lewinsky has said. I would have to conduct an interview with my agents to know what the position of the office is.

Mr. FRANK. The answer was yes.

Mr. HYDE. The gentleman from Arkansas.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Judge Starr, following up, am I correct that the appropriate district court judge reviewed the conduct of the agents at the time they initially interviewed Monica Lewinsky and found that no due process was violated?

Mr. STARR. Well, it was put in terms of a right to counsel, and there apparently are issues with respect to the orders. I am doing my best to recall the judge's order, but the judge, in fact, determined that there was no violation of a constitutional right. That is my best recollection. But the order will speak for itself.

Mr. HUTCHINSON. I want to thank you for your willingness to appear here today. Going back to earlier in the day when we had the dispute over how much time, I do hope the President's counsel will have equal time to make a presentation similar to what you have done today, and I trust that the President's counsel will graciously submit to questions by the Members of this body, as you have done.

I wanted to go back to your testimony. On page 34 you testified that the Constitution provides for two separate proceedings, the impeachment trial and a separate criminal trial. And Mr. Boucher, I believe, asked some questions in regard to this. Would it be within your jurisdiction to pursue any criminal conduct for perjury or obstruction of justice?

Mr. STARR. Yes, Congressman, I believe that under the grant by the Attorney General in the Special Division, there would be jurisdiction in our office.

Mr. HUTCHINSON. In deciding to refer these charges to the Congress of United States as substantial and credible evidence that obstruction of justice and perjury occurred, I assume that there was consideration in your office as to whether criminal proceedings should be initiated?

Mr. STARR. That is exactly correct.

Mr. HUTCHINSON. You have to make a determination whether that can be done during the President's term of office or after he leaves office.

Mr. STARR. That will certainly be an issue.

Mr. HUTCHINSON. Do you have an opinion in that regard?

If you feel uncomfortable answering that, feel free to say so.

Mr. STARR. I feel uncomfortable answering that. I think it is an important issue on which there is a lot of difference of opinion in terms of what is appropriate in our constitutional order. So I am reluctant, without the most careful thought, to speak to that, if you would indulge me that.

Mr. HUTCHINSON. Well, the point I am making is that everybody says that the country wants to get this behind us. And how do you get it behind us? We have had a gentleman from the other side of the aisle say that the President committed perjury, and he ought to be punished. Now, I haven't reached that conclusion yet, but if you reach the conclusion that he ought to be punished, and you don't believe this is an impeachable offense, that means that the only option is for the Independent Counsel to initiate criminal prosecution against the President of the United States, and I don't see how that gets it behind us. I think that is a heavy issue that I know you have to weigh, as well this committee has to weigh.

Now, let me just go on to some other questions here. In your referral, you referred on pages 7, 8 and 9 to a pattern of conduct, and that was really the basis on which the Attorney General gave you an expanded jurisdiction in the Monica Lewinsky case. That pattern of conduct you referred to involved Webster Hubbell; am I correct?

Mr. STARR. That is correct.

Mr. HUTCHINSON. Then in your testimony today at page 45, you indicate that in June of 1994 \$100,000 was paid to Webster Hubbell from James Riady. James Riady is represented in this country, by John Huang.

There has been published reports that John Huang is a cooperating witness. So my question to you would be: Is John Huang a relevant witness in the pattern of conduct you referred to in the original report? And then I want to ask you this—well, go ahead and answer that, if you could.

Mr. STARR. I would prefer to reflect on that and answer that in a more sober way, if I could, as opposed to an impromptu response. In terms of the relevancy of a witness at this stage, and in light of, you know, our coming to judgment, which we reached after a lot of deliberation, we did not include him in the referral. So I would be happy to answer that.

Mr. HUTCHINSON. Do we have all the material at the present time that is relevant to this referral and the pattern of conduct on which you based your jurisdiction?

Mr. STARR. I believe that you do. I know there are still some issues, but I believe that you do, Congressman.

Mr. HUTCHINSON. I think it is important, you know, that we have this information now and not at the conclusion of the hearing process. So I know that you are laboring diligently to that end, but I would certainly urge you to get everything over to us.

And out of respect for the Chair, I will stop.

Mr. HYDE. I love you, Mr. Hutchinson.

The gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman. I have a statement.

We are here today to consider the rule of law in America. I am referring to the rule of law that should be applied fairly to every-

one in America, including the President of the United States. That rule of law and fairness must also be applied by this committee and by you, Mr. Starr. Whether the President engaged in offensive conduct or deceptive conduct is not what we are here to decide. Whether the President can or will be brought up on civil or criminal charges is also not what we are here to decide. We are here to decide whether a United States President, for the first time in over 200 years of American history, should be judged to have committed treason, bribery or other high crime or misdemeanor, and whether it is necessary to remove our President from office.

In yesterday's New York Times, Mr. Starr, your spokesman, Charles Bakaly, III, said, in describing your work, quote, "We make no judgments. We have simply gathered the facts."

Well, Mr. Starr, that is not what your office has done. In truth, in your 450-page referral, you selected, for the most part, the facts that tended to show the President in the worst light and those that would bring condemnation to the President, instead of revealing all the facts and the contexts that might have exonerated the President, or shown the uncertainty and ambiguity of the evidence against the President.

In fact, in my judgment, much of your legal case, Mr. Starr, as set forth to date rests on unfair innuendo and overreaching inference. For example, in your 450-page report, you dismissed and did not even quote Monica Lewinsky's statement to the grand jury when she said, quote, "No one ever asked me to lie, and I was never promised a job for my silence."

And it was left to a grand juror, on his or her own initiative, to raise that question, because no one from your office pursued this obvious line of questioning, which would have been beneficial to the President.

In your 450-page report, Mr. Starr, with respect, I believe you also failed the American people and this committee by omitting or misrepresenting the following facts that would have been favorable to the President, including that Betty Currie testified that taking back the President's gifts was her idea; that discussions about a job for Miss Lewinsky were made more than 5 months before Miss Lewinsky was even mentioned as a witness in the *Paula Jones* case; that Betty Currie was not a witness in any proceeding at the time you allege that President Clinton tried to influence her testimony; that it was the Secret Service and not the President who urged the Court to prevent their agents from being subpoenaed; and that both Miss Lewinsky and the President have said that the President never asked her to submit a false affidavit.

Mr. Starr, you are, as you have said, an eyewitness to nothing relevant to your referral. You have heard nothing firsthand. You saw nothing firsthand. You have no direct knowledge of any facts relevant to your case for impeachment. You have simply provided us with a one-sided 450-page prosecutor's opening statement with unnecessary details of explicit sexual activity designed solely to humiliate and damage the President of the United States.

What motives have driven you to pursue certain evidence only, to characterize that evidence, in my opinion, in a skewed way, and to make a legal case for impeachment founded on innuendo and inference and with whom you consulted in that process will not in

the end determine whether or not I will vote for impeachment. But how you and your deputies have pursued this President and the case you have set forth for his impeachment does lead me to seriously question the facts you have alleged and to seriously question the conclusions you would have us come to.

Mr. Chairman, may I have 30 seconds, please?

Mr. HYDE. Thirty seconds more, surely.

Mr. ROTHMAN. Notwithstanding this, I will withhold my final judgment on impeachment until this inquiry is concluded.

In the end, Mr. Starr, this committee's legacy will not be our decision regarding whether this President is the first in 200 years to be impeached on a finding of treason or bribery or high crimes and misdemeanors. That is Mr. Clinton's legacy. Our legacy will be how we arrived at our decision in faith with the Constitution.

Finally, Mr. Starr, you say in your statement today that you live in the world of the law, and you boast that you often win. But Mr. Starr, this is not about winning or losing in the courtroom. This is not some personal or professional competition between you and Bill Clinton. This is not a legal game or a sport to win or lose. This is about the Constitution of the United States that has kept America strong and free for more than 200 years.

Mr. HYDE. I thank the gentleman.

Do you choose to respond? You are welcome to.

Mr. STARR. Well, let me say this, and I will be, I think, for me, extremely brief.

I believe, Congressman, this is elaborately corroborated. If fair-minded people read it, they will see that the vast majority of facts are not in dispute. It is for you to assess, and this is where I think you are quite right. In terms of judgments, it is your judgment. It is your judgment as to the significance of this. That is entrusted to you.

But we had an obligation to gather facts pursuant to a jurisdictional grant. We gathered them. We believe we were complete. And all the information from which the questions have been drawn with respect to why wasn't this there is all before you.

In our judgment, to say—for example, to take the one example that you especially emphasized, about Ms. Lewinsky's statement, for me it is fair—and you may disagree with this, and we can agree agreeably to disagree—to say in this referral Miss Lewinsky has stated that the President never explicitly told her to lie, and to tell the entire story, not just a part of the story that she was interested in telling because of her understandable reluctance to in any way hurt the President of the United States. We told what we saw is the entirety of the relevant story, and we provided you with all of the additional information for you to evaluate.

Mr. HYDE. The gentleman from Indiana, Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Mr. Starr, it has just recently been asserted that it was the Secret Service and not the President that asserted the novel notion of a protective privilege. But as I understand it, the President's personal attorney Mr. Bennett filed papers in the *Jones* case which said, among other things, quote, "President Clinton, through undersigned counsel, emphatically expresses his support, on behalf of himself, the office of the Presidency and all past and future Presi-

dents for the motion for a protective order filed by the United States Secret Service in this matter.”

I would appreciate your comment on that quote and whether that assertion of a privilege affected your pursuit of the facts in this matter.

Mr. STARR. Yes. It is my understanding that there was, in fact, an embracing of the asserted privilege; and, yes, in our investigation, it was a source of material and considerable delay and an enormous amount of litigation that ultimately went, as we all know, to the Supreme Court of the United States; each judge who looked at it at the lower courts determined that there was no legal basis for the creation of the privilege under Rule 501.

As I said in my opening statement, I think it was a very weak claim. It was not crafted—and I think this is important for the people to understand—it was not crafted as a constitutional privilege to protect the President. Rather, the privilege that was asserted was the protective function privilege under Rule 501 of the Federal Rules of Evidence, which looks to the common law, the experience of courts. It was a very broad and sweeping, but unmeritorious, claim. We had to litigate it. It also prevented our getting timely evidence from people whom we needed it from.

Mr. PEASE. Thank you, Mr. Starr.

Earlier today, I believe it was my colleague from Tennessee who pointed out that in the case of the grand jury testimony, your referral probably made a stronger statement than it did in some of the other matters when it said categorically that the President gave false and misleading testimony under oath.

Can you summarize for us the factual basis for that conclusion?

Mr. STARR. Yes. I tried to do this in the opening statement. Considering, for example, the relationship with Ms. Lewinsky, their activities when they were together and the circumstances of their being together, the circumstances with respect to Mr. Jordan and the responses with respect to whether Mr. Jordan and the President had had conversations about certain subjects, as we outlined in the opening statement in specific detail after specific detail, there is very substantial reason to believe that the President did, in fact, not tell the truth under oath and is contradicted very substantially, we believe, by other undisputed evidence.

Mr. PEASE. One of the—thank you, Mr. Starr.

One of the questions that was raised earlier and for reasons that I understand from the Chair that we didn’t go into, our colleague from California raised the whole issue of credibility of witnesses as you drew your conclusions that were sent to us. But I would like to address, at least for a few moments, the issue of the credibility of Miss Lewinsky. And we know, from your statements and others, that she made false statements. She was granted immunity, then made other statements. Why is it that we should believe some of those statements on which you rely and we should not believe other statements that we know to have been false?

Mr. STARR. Yes. The reason is corroboration. And I quite agree, a statement by a witness who has been known to lie should, in fact, be then examined and checked. So you look at other evidence and ask if the evidence corroborates it.

Her evidence was very powerful and indeed we thought compelling, as I tried to mention earlier. When she could say that when she was alone with the President—he denied being alone—that he received a phone call from a Florida sugar grower whose name sounded like Fanjul, it was very close, including the time, so we would check telephone records and the like, and movement logs. We elaborately and thoroughly documented all of those issues for the very reason that a number of the witnesses in this matter had questions with respect to their credibility.

That's why you don't go with a witness statement alone. You look to see what other evidence, if any, there is to corroborate, and here there was overwhelming evidence to corroborate.

Mr. PEASE. Thank you, Mr. Starr.

Thank you, Mr. Chairman.

Mr. HYDE. The gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Mr. Starr, I believe President Clinton's actions were wrong.

Mr. STARR. I beg your pardon?

Mr. BARRETT. I believe President Clinton's actions were wrong, and we must decide as a Congress, as a country, how he should be held accountable. But I also believe that the ambivalence that this country feels and that I feel about this matter is colored in large part by the actions of your office and Linda Tripp.

I am going to ask you a series of questions, most of which have been asked by Mr. Lowell and to which you have given longer answers, so I would ask that you give short answers. In fact, I believe every one of these questions can be answered with a yes or no, and I am going to ask you and let you answer right after each question.

Prior to being named Independent Counsel, you gave your opinion publicly on several occasions that Paula Jones's lawsuit should be allowed to go forward. Is that correct?

Mr. STARR. I—the implicit—the answer to that is yes.

Mr. BARRETT. It is an easy question, Mr. Starr.

Mr. STARR. I think the answer to that is yes.

Mr. BARRETT. In fact, you even had several conversations with Gilbert Davis, Paula Jones' attorney, and discussed constitutional issues in this case, correct?

Mr. STARR. That is correct.

Mr. BARRETT. Let's fast-forward to this hearing. Your office entered into a written immunity agreement with Monica Lewinsky; is that correct?

Mr. STARR. That is correct.

Mr. BARRETT. And this written immunity agreement contained a secrecy provision that prohibited her from talking about her testimony, including talking to the media; is that correct?

Mr. STARR. Yes, that is correct.

Mr. BARRETT. And your office also provided an immunity letter to Linda Tripp; is that correct?

Mr. STARR. Yes, that is correct.

Mr. BARRETT. But Linda Tripp's immunity letter had no secrecy provisions, did it?

Mr. STARR. I believe that is correct. I have not—Congressman, may I be permitted to say just a word?

Mr. BARRETT. Yes.

Mr. STARR. I have not reviewed the Linda Tripp letter in advance of this, but it is my understanding that it does not contain this. But that is my—that is my understanding, and that is my best recollection.

Mr. BARRETT. I will read it: This letter confirms the previous representations I have made to you regarding your client Linda R. Tripp. As we have discussed, we agree on behalf of the United States that coextensive with the provisions of Title 18 . . . no testimony or other information provided in this agreement or information directly or indirectly derived from such testimony or other information may be used against Ms. Tripp in any criminal case, except a prosecution for perjury.

That is the essence of the letter.

So nothing in this immunity letter prohibited Linda Tripp from talking to the media; is that correct?

Mr. STARR. Again, that is correct, but if I can say just a word.

Mr. BARRETT. I think you have answered it. I just want to get through my questions, and I think you have answered it.

Mr. STARR. But I need to get through my answer, and I simply need to say one sentence. This was a different kind of immunity than the immunity granted to Monica Lewinsky.

Mr. BARRETT. I understand. You explained that to Mr. Lowell.

Mr. STARR. Yes. I am sorry.

Mr. BARRETT. Now, on January 13, 1998, your office sent Linda Tripp, wired for sound, to meet with Monica Lewinsky at the Ritz-Carlton Hotel; is that correct?

Mr. STARR. That is correct.

Mr. BARRETT. Indeed, after Linda Tripp had been wired, a reporter for Newsweek called your deputy, Jackie Bennett, and made inquiries about these activities; isn't that correct?

Mr. STARR. I believe the timing of that is correct.

Mr. BARRETT. And following that call, there was nothing put in writing to Linda Tripp or her attorney limiting her from talking to the media; is that correct?

Mr. STARR. I think that is correct. I would have to review the record, but I think that your understanding is correct, subject to my review of the record.

Mr. BARRETT. And nothing in the written immunity agreement prohibited Linda Tripp from talking to or working with Paula Jones or her attorneys; is that correct?

Mr. STARR. That is correct, and we then made it clear, when it was evident that the—I am sorry.

Mr. BARRETT. I am talking about the written agreement now. And on the eve of the President's deposition in the *Jones* suit, Linda Tripp met with Miss Jones's lawyers; is that correct?

Mr. STARR. That is my understanding now. It was not our understanding or information at that time.

Mr. BARRETT. I understand. And at that point, on January 16th, she was an agent for your office, and the same day she met with Paula Jones's attorneys. That is correct?

Mr. STARR. Well, I would—

Mr. BARRETT. I am not asking whether you liked it or you approved of it. I am just asking factually whether that is true.

Mr. STARR. That she was being a witness for us, and she was, in fact, providing certain information to us. What we were seeking under this immunity agreement was the information that she said existed.

Mr. BARRETT. I am asking whether it is true whether she had acted as an agent for you that day, and whether she met with Paula Jones's attorney that night.

Mr. STARR. She had acted as a cooperating witness.

Mr. BARRETT. Fine, as a cooperating witness.

Mr. STARR. Well, she was acting in collaboration with us, and if I could be permitted to answer that.

Mr. BARRETT. Let me just finish.

Mr. STARR. Okay.

Mr. BARRETT. I would ask the chairman to give you a little time, if I could.

But she was free to do that because there was nothing in the immunity agreement to prohibit her from doing that.

Mr. STARR. Again, the purpose of the immunity agreement was different, and you are right.

Mr. BARRETT. Okay. I just want to know that.

Mr. STARR. There was nothing in the immunity agreement because of the very nature.

Mr. BARRETT. The next day was, of course, the day that President Clinton was deposed. And there was a question asked of him about whether he had tried to bribe Monica Lewinsky or other things, and he was very surprised by this. And James Fisher, her attorney, responded, and this is from Time Magazine, "I think this will come to light shortly, and you will understand."

Now, what this tells me, Mr. Starr, is that we start out, and 4 years earlier you have shown your support for not having the President be immune from lawsuit. And in the end we have the attorney for Paula Jones knowing exactly what your office is doing and having one of the key witnesses in your case cooperating not only with you, but with Paula Jones's attorneys. That is why this country feels as it does.

Mr. HYDE. The gentleman's time is up. The witness may answer.

Mr. STARR. Yes, if I could respond briefly. There are a number of premises in your last question that I just respectfully but fervently disagree with.

I do not believe that my position with respect to the constitutional immunity of the President, which I discussed with a variety of persons, including Mr. Fiske, Mr. Davis, and others, has the slightest bearing or relevance on the questions that were before us in 1998. You may disagree with that, but that was my judgment.

And I would simply say that the position that I took was vindicated by the Supreme Court 9 to 0. That suggests that the—

Mr. BARRETT. I don't quarrel with that at all. Just so you understand, I don't quarrel with that at all.

Mr. HYDE. The gentleman is answering.

Mr. STARR. But it is also because the issue that had engaged my attention, the possibility that Bob Fiske would file an amicus brief in the Paula Corbin Jones civil case, was likewise information that I did not think had a bearing on the issues that were before us in a criminal case, and that was my judgment. And what we did bring

to the Justice Department, to make sure that the Department knew what we were doing, was the information that we had, and we said, we want to give all information that is available to you, and ask questions. And my involvement in 1994 had been very public, and indeed I had been on various news programs espousing that very position.

Mr. BARRETT. Again, Mr. Starr, I don't think—

Mr. HYDE. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

Mr. Starr, this has been a long and very tough hearing, although I, for one, have thoroughly enjoyed your answers.

Mr. STARR. Thank you.

Mr. CANNON. Your name has been slandered around the country for a year and more, and there have been many factual bases for that slander. We have gone now through, I think, some of the best and brightest—allegedly slander, I should say—of the people in Congress, many of whom have participated in that, and what I would call the President's prodefamation league. And you know what, they have whiffed today. They have gotten nothing. Your answers have been so good that I don't think they have found even colorable impropriety on your part. The answers that you have given being relatively difficult for them, it is easy to see what they have reverted to.

We have had a series of repeated unsubstantiated and frankly embarrassing bombast directed at you with great intensity, and one to four questions leveled at you, sometimes very complicated, with follow-up interruptions that have made your answers difficult. And I might say that—just point out that the Chair has been a lot more gracious with the Democrats than with the Republicans in this hearing today.

I now see why the pit bulls of this administration have been unleashed on you. You have done a great job and, frankly, I believe that every pundit in America will believe and conclude that your presentation today has changed the nature of this debate from you to the President's acts.

Let me just clear up a couple of things that I have heard today. You talked earlier about the civil perjury in the Jones deposition, and the issue of materiality came up, and you used the term "bogus." Would you just clarify? Did you mean in that to say that the false statements made in the Paula Jones deposition were, in fact, material, and that any argument that they weren't material is bogus?

Mr. STARR. Yes. I wasn't sure, and you will forgive me, I am not recalling in what specific or particular I used that term, and that is a strong term. But I do think that the matters that were there and that you have been analyzing do satisfy a reasonable juror's view with respect to the question of materiality, which, again, as I have said, is ultimately a jury question. And I think one of the issues, therefore, that you would assess is what would I, as a juror, do, although I hasten to note that your function, of course, here is ultimately a constitutional function and not an ultimate fact-finding function, although obviously you have great and unbridled and unfettered discretion in terms of how you will define the project or the mission in order to fulfill your constitutional duty.

Mr. CANNON. That is in the context of a civil action.

Mr. STARR. Yes, and that is in the context of a civil action. I am sorry.

Mr. CANNON. According to the sworn declaration of White House counsel Charles Ruff, the President personally directed him to assert executive privilege to prevent you from questioning some of his assistants.

When he was in Africa, however, President Clinton denied knowing about the assertion of executive privilege. Which is it? Did Mr. Ruff ever amend his declaration, or is the President lying to the public on his Africa trip?

Mr. STARR. To my knowledge, Congressman, there was never an amendment to the declaration, and the declaration was filed on March 17—the declaration may be dated March 17, and then the President's statement in Africa was on March 24th.

So they both can't be right. Either the President had discussed with Mr. Ruff the invocation of executive privilege or he had not. Both cannot be true.

Mr. CANNON. I understand that certain White House officials asserted executive privilege with respect to portions of conversations with Vernon Jordan, a private citizen. Is this true, and on what basis could such a claim be made?

Mr. STARR. There was an invocation of executive privilege early on, and we believe—with respect to conversations with Vernon Jordan. They were withdrawn. But we believe that that is part of the pattern of the lavish and, we believe, unfounded invocation of executive privilege.

How can a conversation with someone who is outside the government and relating to matters involving an affidavit in a private civil case and securing a job at Revlon for someone, how can that possibly justify a good faith invocation of executive privilege?

Perhaps others disagree with me. I gather, from the testimony that you have heard, others do disagree with me. But to me, when you look at the totality of the invocation and the withdrawal of executive privilege, I conclude that there is a pattern of abuse.

Mr. CANNON. Thank you, Mr. Starr. I think that 1998 is going to be the year of McGwire, Sosa and Starr.

I yield back.

Mr. HYDE. Thank you very much.

The gentleman from California, Mr. Rogan.

Mr. ROGAN. My colleagues' characterization may be right. I just hate to guess what type of hall of fame you may end up in when this is all over, Judge Starr, but I do thank you for your staying power today and for joining us.

I was particularly interested in the grave concern that has been repeatedly expressed by my colleagues across the aisle respecting your office's initial interview with Monica Lewinsky. I have been sitting here listening for several hours to the vigorous cross-examination that you have endured by those who are professing a desire to ensure that Monica Lewinsky was neither inconvenienced or intimidated by your office during your interview with her.

I would note that if your office did violate any of her procedural due rights, there are legal remedies that she would enjoy to protect her from any legal liabilities or criminal liability.

Mr. STARR. Yes. And could I just add one thing, Congressman, because this has arisen so frequently, that one of the reasons, in terms of reliability, whatever one thinks with respect to our activities on the evening of January 16th, not one piece of evidence in this referral relates to or depends upon what happened, because she chose at that time not to be a cooperating witness.

Nothing in this referral is affected by the events at the Ritz-Carlton. So it is ultimately a very interesting academic question that embodies more a "what can we attack the prosecutor?" with than anything else. But ultimately, even the attacks on the prosecutor and the investigation are utterly without merit.

Mr. ROGAN. Judge, I want to take this—

Mr. STARR. Yes, excuse me.

Mr. ROGAN. And I hate to interrupt, but my time is limited. I want to take this bipartisan concern over the potential victimization of Monica Lewinsky to the next step. Looking at the evidence, as Ms. Lewinsky testified to, that the President suggested she could sign an affidavit and use under oath deceptive cover stories. If, in fact, the President convinced Monica Lewinsky to engage in this pattern of conduct, what are the legal liabilities that Monica Lewinsky would face if this were uncovered and she were convicted?

Mr. STARR. She would be facing possible criminal charges, at a minimum, for perjury, and additionally possibly subornation of perjury, and the penalty with respect to perjury alone is 5 years imprisonment maximum.

Mr. ROGAN. This goes beyond mere inconvenience in an interrogation. You are talking about incarceration for up to 5 years? Is there a potential fine that is involved? Could she lose her voting rights in her home State? Are there other severe penalties that she could face?

Mr. STARR. Yes, all those can flow. Fines can be imposed, and the sentencing guidelines guide this, and yes, there could be a loss of voting rights in her home State of California.

Mr. ROGAN. And I raise that, Mr. Chairman, and Judge Starr, because as much as I appreciate my colleagues on the other side rising up in indignation over the bare suggestion that Ms. Lewinsky was incommoded or intimidated during your interview, I am absolutely dumbfounded by their heretofore silence on the very real and very permanent threat to her liberty and her rights as a citizen if her characterization of President Clinton's conduct is true. And I hope that will be addressed perhaps by the President's attorney when he joins us in a few minutes.

Moving to the President's deposition in *Jones v. Clinton*, when he said "I don't recall" if he had ever given any gifts to Monica Lewinsky, and when he said "I have no specific recollection" of ever being alone in any room of the White House. Looking at those two sorts of answers, "I don't recall," and "I have no specific recollection": what is the legal significance in a deposition or in a trial for a witness who swears to tell the truth, the whole truth and nothing but the truth to give an answer such as, "I don't recall, or, "I have no recollection," when, in fact, they do recall and they do have a recollection?

Mr. STARR. That can be proven up to be perjury. That is to say, you have to give under the oath the whole truth and nothing but the truth, and if one does recall but says one does not; that may be a difficult issue, but one then looks to the circumstantial evidence. Is it likely that one would recall being in this room at some time in 1998? It is likely that one would recall that, especially if one is asked that in 5 weeks?

So what were the circumstances? And, yes, the circumstances were such that a reasonable human being, given our common human experience, would recall, and, yes, individuals have been prosecuted for the inability to recall that which is viewed as so straining credulity as simply to be a lie.

Mr. ROGAN. The mark of a freshman Congressman is they always stop talking, Mr. Chairman, when their time really is up. I hope to maintain that philosophy during my sophomore year with this committee.

Mr. HYDE. Very well.

The gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman. I have one question, with a possible follow-up depending on the answer.

Did the 23 members of the grand jury sign off on this referral?

Mr. STARR. No, we did not ask the grand jury to review the referral. We briefed them on our obligations. It was our view of the statute, it is our reading of the statute, that it is the judgment of our office.

Mr. BERMAN. I understand the statute in no way obligates that.

Mr. STARR. Yes.

Mr. BERMAN. My follow-up, given that they didn't sign off on it, did they vote on or review the allegations, the credibility determinations or the inferences that the referral draws?

Mr. STARR. No. We did not ask the grand jury to make specific judgments on specific witnesses. These were our assessments. These were our evaluations.

Mr. BERMAN. Thank you very much.

Mr. HYDE. The gentleman from South Carolina, Mr. Lindsey Graham.

Mr. GRAHAM. Thank you, Mr. Chairman.

If you can handle a couple more, we are about at the end here.

One thing I have learned, Judge Starr, about impeachment, it is becoming more and more clear to me, I asked a question before to myself, really, is this Watergate or Peyton Place? And I learned that I dated myself because no one in my office knew what Peyton Place was about. So it should have been Melrose Place, I suppose.

But one thing I have learned is without—we can talk academically and legalistically about crimes and punishment, but without public outrage, impeachment is a very difficult thing, and I think that is an essential component of impeachment. I think that is something that the Founding Fathers probably envisioned.

But the most bizarre thing to me, and it is odd times in which we live, that the public outrage is directed at you and not at the person who has allegedly done all of these things. Let me talk about that person for a second.

Is it Watergate or Peyton Place? I can remember Watergate pretty well because I was in high school. And as I looked through this,

you have got Mr. Hubbell, who is about to come testify or offer evidence to the government. Then you have a cast of characters on behalf of the President, maybe on his behalf. I don't know if it was on his behalf or not, but there are certainly acquaintances of the President, friends, donors and benefactors, who drop about \$550,000 on this guy to do business for them, and he is getting ready to go to jail. The last time I checked, when you are getting ready to go to jail, marketability goes down.

So I find it very difficult for me to sit here and believe that that amount of money going to that man at that time wasn't an orchestrated effort by somebody to get him to shut up to avoid one of the messes that the Clintons have created because a land deal went bad. But you are telling me you can't lay that at the feet of the President, so I am going to be stuck with that.

We have now evidence about Kathleen Willey, a lady who says that she went to the President when times were bad to ask for a job, and something bad happened. And whether she is telling the truth or the President is telling the truth, I don't know, but if she is telling the truth, that tells me a lot about William Jefferson Clinton.

Now you give me some information that an individual close to the President asked her to come down to his place, and now he takes the fifth amendment about what he did with her.

We have files turning up in the White House that you have been looking for a couple of years, that nobody can find, and a copy of them are in the loft of a dead guy, and you are telling me you can't lay this at the feet of the President.

Now we will go to what—I think that is Watergate stuff—the Dick Morris secret police unit, from Bruce Lindsey and other people who have been loyal to the President and some private investigators, if you don't like Linda Tripp—and I can understand that. There are some people over there you shouldn't like either. The more you know about them, the less you will like. But this is not about liking anybody. This is about the law.

As much as I dislike the President politically, and as much as I wonder about who he is and what kind of people represent him, we are going to play it straight. And we are going to play it straight, folks.

If I bring you two perjurers, does it matter if one confessed and the one put the State through the pain and expense of a trial and punishment? Does that matter, Judge Starr, as a judge? Don't you take that into consideration?

Mr. STARR. I certainly think it is a relevant consideration, whether someone accepts responsibility or else, you know, as some pundit put it, "It is the 7 months, stupid."

Mr. GRAHAM. The point I am trying to make—

Mr. STARR. And I did not mean to direct that, but I was just quoting the pundit. That it was what—it is what the Nation was put through.

Mr. HYDE. I think we heard you right, Judge Starr. That inflection was important.

Mr. STARR. That is what the Nation was put through.

Mr. GRAHAM. I have heard a lot from pundits, and I would rather try to focus on the facts, to be honest with you.

The point I am trying to make is that the law that you cherish and I cherish, and I think we all love, allows for you to treat people differently based on what they lied about. That is not a bad thing to talk about. Every perjurer doesn't get the same punishment. That is a concept that we are going to have to deal with here.

Without public outrage, impeachment is hard to do, and it should be hard to do. And the truth of the matter is, Judge Starr, we may never get public outrage on behalf of what the President did because some of the things that are Watergate-like we can't lay at the feet of the President. But what he did do is he lied through his teeth in a civil deposition, and I am going to disagree with you about the legal effect.

When the judge ruled that his deposition was not admissible, I have a problem with materiality in terms of perjury, and I am going to disagree with you, and I am going to stick by my word for the last 2 months. I am not going to consider that an impeachable offense because I don't think legally you would probably get prosecuted for that, or you would have a heck of a hard time once the case was dismissed and your testimony was deemed inadmissible. And I may be wrong, but I am going to give him the benefit of the doubt.

But I am telling you right now, it is Peyton Place what we are left with, but the cover-up Peyton Place has gone to the point that I no longer can ignore it and feel good about it because I believe the President of the United States went into a grand jury, in front of your grand jurors, took an oath, and 6 and 7 months after this whole affair started, after being begged by everybody in this country to come clean, lied again.

Mr. HYDE. The gentleman's time has expired.

The gentlelady from California, Mrs. Bono.

Mrs. BONO. Thank you, Mr. Chairman.

I actually want to share something with you first as your newest Member. When I first came to this committee, I told my colleagues that I don't understand the rules yet, the 5-minute rules and the etiquette. I asked my colleagues for help. They all yelled back at me, "Don't worry; we don't understand it either." I was thinking when I get my orientation on the rules, maybe we can all sit down and learn the rules.

I just want to say to Judge Starr that it has been an extremely enlightening day for me. Up until now, basically, your persona has been one of a character out of Ground Hog Day, if you will. Where you have been the same person day in and day out to all of us. Where you have walked from your house to a car, smiled, and got in. That is all that we have known of you.

I think that it is nice to see that behind that image there is a human; behind the spin that there is a human. I also want to say that what has been most interesting to me today is to watch all of these lawyers attacking other lawyers for what it is lawyers do, whatever it is.

I have to say also I think you have been the victim of a lot of Monday-morning quarterbacking into your investigation. None of that changes the facts. None of that changes the truth, and the election on November 4th also did not change the facts. It did not change the truth.

I must say that you have proven yourself to me today to be a fair, competent, meticulous and thorough person that Attorney General Janet Reno knew you to be when she appointed you.

Mr. STARR. Thank you.

Mrs. BONO. You know, some criticized you that you boast about all of your wins. I think you should boast, because I think you do what you do very well. I think far be it from anybody in this town to criticize somebody for boasting about their record.

I do have a question for you. Judge Starr, you and your family have been subjected to an enormous amount of personal persecution during your tenure as an independent counsel, particularly over the last year. What motivates you to keep going forward? Do you have this bone to pick with the President or this personal vendetta? Do you hold personal animosity toward him and has that affected the job you have done?

Mr. STARR. Well, I thank you for that question. And I hold no animosity, and I would love to be back in private life. I received questions today with respect to, well, didn't you accept a deanship at Pepperdine, and look who made a contribution.

So, you are right, I would prefer to be almost your constituent, a little bit farther west. I would like to be—and I even looked at a house in Malibu Country Estates. That is where I would like to be. I would like to be living my life with my family, and I tried to do that because I had a view that I could, in fact, lay down the mantle long before Monica Lewinsky ever walked into the Nation's life, and pass the mantle on to someone else because of what I had tried to create. And I have talked about it today, which is that this Office of Independent Counsel should, in fact, reflect the experience and practice of the Justice Department.

I love the Justice Department. I served there two times, and I loved every moment that I was there, even during the rough times, and there were plenty of those, because it is a great department. And so I tried to create the Department of Justice and frankly felt that I had.

Unfortunately a number of my prosecutors are being calumniated and criticized. It is one thing to criticize the Independent Counsel. It goes with the territory. But to criticize and to calumny the men and women with whom I am privileged to serve, many of whom are on detail from the United States Department of Justice, is, I think, wrong, and I think it is unfair, and I think it is unfortunate.

But that is what I thought I had created. I tried to say my job has reached a stage where I feel that the Independent Counsel's Office, with offices in Little Rock and in Washington, would, in fact, be able to carry on very effectively under new leadership.

I tried to retire. I think George Washington was very wise in saying, 8 years is enough. I would rather go back. Of course, he wasn't across the river where the capital was then. But I would rather return to Mount Vernon, thank you very much.

Well, I would have preferred to have returned to private life, but I was importuned by my own staff, and I let down my staff because the deliberative process that I had so talked about, that before we make any major decision, whether one agrees with the decision or not, we deliberate about it, and they basically said, "Ken, you let us down. You didn't deliberate with us. You chose your own deci-

sion professionally without a process as to what this might mean at this particular time to the investigation.”

If I could be indulged 30 more seconds.

I will always remember the comments by an assistant United States attorney, one of the senior prosecutors in the South, I think Congressman Bryant would know him, but I don't name the names of our line prosecutors, but he was on detail to us in the Little Rock office, and he had a major case responsibility. He came to me and said, and this was indicative of what I was receiving, “You are making a profound mistake, and it is unfair to the investigation. You cannot leave.” And this was after I had been roundly criticized on any number of—for my many sins of commission and omission. Even with all of that, the suggestion was made, and I was both honored by it and humbled by it, but also frankly a little bit down in the dumps about it, it was sort of, it is not time to leave.

So my duty is to do my duty. I did not ask for this investigation to come walking in the door. It came to us. We took it to the department that I love greatly and admire greatly, the Department of Justice, and we said, what do we do? As colleagues, how do we collaborate? How should this matter that unfortunately for the country and unfortunately for this committee is now before you, and it came to me, and that is why I am here.

In terms of my family, they are bearing up well, and thank you very much for asking.

Mrs. BONO. Thank you, Judge Starr.

Mr. HYDE. The gentlelady's time has expired.

Mrs. BONO. Thank you, Mr. Chairman.

Mr. HYDE. I would like to thank her very much.

We will now recess until 8:25 p.m., and we would ask that everyone stay in their place until the Independent Counsel has left.

Ms. JACKSON LEE. Mr. Chairman, will Mr. Starr be back?

Mr. HYDE. What?

Ms. JACKSON LEE. Will Mr. Starr be back? I have a point of order.

Mr. HYDE. Indeed he will be back because Mr. Kendall has to question him, and so does Mr. Schippers.

Ms. JACKSON LEE. I have a point of order.

Mr. HYDE. If you wish.

[Recess.]

Mr. HYDE. The committee will come to order.

The Chair now recognizes the President's counsel, Mr. Kendall, to examine the witness for 30 minutes, should he chose to do so. Mr. Kendall.

Mr. KENDALL. Mr. Chairman, Mr. Conyers, members. My name is David Kendall. I am the personal attorney for President Clinton. My task is to respond to the 2 hours of uninterrupted testimony from the Independent Counsel, as well as to his 4-year, \$45 million investigation, which has included at least 28 attorneys, 78 FBI agents, and an undisclosed number of private investigators, an investigation which has generated by computer count 114,532 news stories in print and 2,513 minutes of network television time, not to mention 24-hour scandal coverage on cable, a 445-page referral, 50,000 pages of documents from secret grand jury testimony, 4 hours of videotape testimony, 22 hours of audiotape, some of which

was gathered in violation of state law, and the testimony of scores of witnesses, not one of whom has been cross-examined. And I have 30 minutes to do this.

It is a daunting exercise, but let me begin with the simple but powerful truth that nothing in this overkill of investigation amounts to a justification for the impeachment of the President of the United States.

Mr. Starr, good evening.

Mr. STARR. Good evening. How are you, David?

Mr. KENDALL. I am very well, Ken. You have the book of exhibits before you, do you not?

Mr. STARR. I do.

Mr. KENDALL. Would you turn to tab 5, which is a press release which your office issued under your name on February 5, 1998. Do you see that?

Mr. STARR. I do.

Mr. KENDALL. I want to direct your attention to your statement, and you are addressing the fact that you have not been able to talk to Ms. Lewinsky yet, and you say in your press release, "We cannot responsibly determine whether she is telling the truth without speaking directly to her. We have found that there is no substitute for looking a witness in the eye, asking detailed questions, matching the answers against verifiable facts, and, if appropriate, giving a polygraph test."

Did you issue that press release saying that, Mr. Starr?

Mr. STARR. Yes, I did.

Mr. KENDALL. And questions have been addressed to you today about the credibility of various witnesses, including Ms. Lewinsky. It is true, is it not, that you were not present when Ms. Lewinsky testified before the grand jury?

Mr. STARR. That is true.

Mr. KENDALL. And you were not present at her deposition.

Mr. STARR. At her deposition?

Mr. KENDALL. Yes. Were you aware that Ms. Lewinsky was deposed?

Mr. STARR. I am sorry, in our deposition. I am sorry, I misunderstood you. Yes, I was not present.

Mr. KENDALL. You were not present on any occasion when she was interviewed by FBI agents, were you?

Mr. STARR. That is correct, I was not.

Mr. KENDALL. And you have never really exchanged words with Ms. Lewinsky, have you?

Mr. STARR. That is correct. The answer is yes, I have not had occasion to meet or otherwise to look her in the eye myself.

Mr. KENDALL. The same is true for her mother, Marsha Lewis; is it not?

Mr. STARR. Yes, that is true as well. That is true.

Mr. KENDALL. The same is true for Betty Currie?

Mr. STARR. Yes.

Mr. KENDALL. The same is true for Vernon Jordan?

Mr. STARR. Well, in connection—I happen to know Mr. Jordan, but yes, in connection with this—

Mr. KENDALL. In connection with this case, were you present during his grand jury testimony?

Mr. STARR. No, I was not.

Mr. KENDALL. And were you present at any interview of him?

Mr. STARR. No, I was not.

Mr. KENDALL. Would the same be true for Mr. Podesta?

Mr. STARR. The answer is the same with respect to Mr. Podesta, yes.

Mr. KENDALL. And indeed, Mr. Starr, there are 115 individual grand jury transcripts which your office submitted to the House, and, with the exception of the deposition of the President of the United States, you were present at none of those grand jury proceedings, were you?

Mr. STARR. That is correct.

Mr. KENDALL. Likewise, there were 19 depositions submitted, and you were—at least the reporter doesn't show you being present on any of those; is that correct?

Mr. STARR. I think that is right. I need to reflect on some of the Secret Service matters, but I think you are correct that I was not actually present for any of the depositions themselves, including the Secret Service officers.

Mr. KENDALL. And there are 134 FBI Form 302 interviews submitted. You are not shown as being present at any of those, are you?

Mr. STARR. That is correct. I would ordinarily not be present for an interview of a witness.

Mr. KENDALL. Mr. Starr, I bring this out not to cast any aspersions or to question your use of time, but you are here as—and I believe you have already said this—you are not a fact witness; is that correct?

Mr. STARR. Yes, in terms—well, I can testify to a number of facts in the investigation.

Mr. KENDALL. Such as your own autobiography. I am talking about facts of this investigation.

Mr. STARR. Could I answer the question? I believe that there are a number of facts that I can, in fact, testify to, but with respect specifically to this investigation and most particularly with respect to the abuse of power issues. But with respect to other questions, the President's perjury and obstruction of justice and the like, to the extent that one is talking about fact witnesses, you are quite right.

The function of the Independent Counsel himself or herself is ordinarily, ordinarily, depending on the size of the investigation, not one to accompany FBI agents. One relies upon the professionalism and the expertise of one's colleagues in the FBI who work ultimately under the aegis of Judge Freeh.

Mr. KENDALL. There were—unlike the 1974 grand jury referral to the House Judiciary Committee, this referral was not submitted to the chief judge of the district court, was it?

Mr. STARR. The answer to that, and I may want to reserve part of my answer for executive session, let me say that we did not seek the approval of the Chief Judge with respect to the contents of the report.

Mr. KENDALL. Was she ever shown a copy of the referral?

Mr. STARR. I would prefer to go into executive session with respect to communications I may have had with the district court.

Mr. KENDALL. The grand jury did not vote to approve or forward this referral; is that correct?

Mr. STARR. That is correct, because, as I have said, the decision with respect to the referral is the product of career prosecutors who came together from around the country, and I tried to make sure that the committee understood that the individuals who were involved in assisting me and in guiding me are career Department of Justice U.S. Attorney's Office prosecutors from around the country, but ultimately this is, David, my judgment.

Mr. KENDALL. You are here really as an advocate for this referral; are you not?

Mr. STARR. I view myself—no, I think that is not right. I do believe in the referral. I tried to answer questions with respect to the referral, although many questions did not relate to the referral, but related to other matters. But I do believe in it.

But the reason that I should not be advocating is because it is this committee's judgment that they will come to by virtue of the submission of this in writing, with the supporting materials, and then it is up to the committee to determine, do they want to call additional witnesses and the like. Our task was to put before them the information that we found met the statutory standard of substantial and credible information.

Mr. KENDALL. In your testimony today, you indicated that you had exonerated the President with regard to the Travel Office, if I heard you correctly; is that correct?

Mr. STARR. Yes. What I indicated was that we had no information that related to his involvement, although I also made it clear that that investigation is continuing, and we hope to announce decisions or actions very soon.

Mr. KENDALL. The Travel Office firings which you are investigating occurred in 1993; is that correct?

Mr. STARR. Yes, the firings were in 1993.

Mr. KENDALL. Also, if I heard you correctly this morning, you indicated that you had exonerated the President with respect to the FBI files matter which had arisen in 1996; was that correct?

Mr. STARR. Yes, that jurisdiction did come to us in 1996 from the Attorney General, and, yes, we have found, as I indicated, no evidence of any wrongdoing by anyone who is relevant to, I believe, at least in my assessment, I can't speak for the committee, that would be relevant to the committee's assessment of our referral.

Mr. KENDALL. Mr. Starr, when did you come to those conclusions?

Mr. STARR. With respect to the Travel Office, I would frankly have to search my recollection to see exactly where we were and when we were there. As I indicated with respect to the Travel Office, we have, in fact, had to put part of the Travel Office investigation—and I am now talking about the Travel Office, and I will come to the FBI files—we had to put part of the Travel Office investigation on hold, as it were, because of issues over privileged litigation, which we did not prevail on in the Supreme Court. And there are other matters that we are presently examining and which I can't talk about here.

Mr. KENDALL. Were the two exonerations you announced today, did you come to those conclusions before or after November 1, 1998?

Mr. STARR. Before November 1 of this year?

Mr. KENDALL. This year.

Mr. STARR. Well, I would say that we have not had information that would guide us to the view that we should be concerned about the President in respect of those two matters, and that is why, of course, there is no mention of either of those matters in the referral. But both matters were, in fact, continuing, and no final prosecutorial decisions had been made with respect to either the Travel Office matter or, now to address the FBI files matter, with respect to that.

There is, as I have indicated, an unresolved question with respect to one individual. I have not named that individual. But I do not have—it remains unresolved, so it is a predictive judgment, Mr. Kendall, that nothing we are likely to achieve in either of those investigations will be relevant to this committee's inquiry, and that is what I view my duty as being.

Mr. KENDALL. And today was the first time you have announced that with respect to these two matters; is it not, Mr. Starr?

Mr. STARR. It is the first time that we have viewed it as appropriate to speak to issues that are still, David, under investigation. We are still investigating both matters, and I hope I have made that point clear. Both investigations have very live, active elements to them, and we will make those decisions promptly. But I felt it was my duty to inform this committee of the state of the record with respect to the President of the United States, because the committee has been asking me, do you have any other information that is relevant?

I have received a lot of correspondence. Mr. Conyers—

Mr. KENDALL. Mr. Starr, I have only 30 minutes. If I could, I think you have adequately answered my question.

Let me return to a question asked by Congressman Wexler this afternoon, and that was about a witness named Julie Hiatt Steele. Have your investigators investigated the adoption of her 8-year-old child? She adopted it from a Romanian orphanage.

Mr. STARR. Mr. Kendall, my investigators work very hard and diligently to find relevant evidence. I believe that the questions—and I have conducted no specific investigation, and you just spent a good deal of time establishing that I don't go with my FBI agents on every single interview. Indeed, I don't go—may I finish? You asked the question.

I don't go with them on interviews. They have a fair amount of discretion as professionals as to what is appropriate to inquire into. But let me simply say this: There is an enormous amount of misinformation and false information that is being bandied about with respect to that particular witness and the circumstances of questioning. I will look forward at the appropriate time to be able to demonstrate that to any fair-minded person beyond any reasonable doubt.

Mr. KENDALL. Mr. Starr, I am asking the question for the facts. I am not casting aspersions. Again—

Mr. STARR. But, Mr. Kendall, you just said I was not present for the following persons: Ms. Lewinsky, Marsha Lewis, and Vernon Jordan. You are now asking me about FBI interviews, and you talked about how many witnesses there were, and now you are asking me specifically was a specific question asked of a particular witness. I will be happy to find that out, if it seems to be relevant to this committee.

Mr. KENDALL. Mr. Starr, I don't think it is unfair to try to find out the facts, because there has been considerable publicity about Ms. Steele's claim that that is, in fact, what your investigators have been doing. I was simply asking to clarify the record.

Mr. STARR. Well, in respect of some of her claims, some of her claims, and I am going to say this even though there is an active part of our investigation under way, are utterly without merit and utterly without foundation, utterly without factual foundation.

Mr. KENDALL. Is this one of those claims?

Mr. STARR. No, I did not say that, Mr. Kendall. I am aware of certain—the specific question that you asked goes to whether one or a series of questions were asked of one witness, and my point is, I thought that what we were here today to discuss is a referral which we believe contains substantial and credible information of potential impeachable offenses by the President of the United States. What a particular witness's demeanor was or what a particular FBI agent asked is, to my mind, quite far removed from the sober and serious purposes that I thought brought us here together. And the final thing I would say in this respect, if there is an issue with respect to the way a witness is treated, that is why courts sit. I was privileged to serve as a judge. That is why judges work.

Mr. Kendall, if there is an issue with respect to the treatment of a witness, let's take it to court and have the court resolve it in an orderly way, just as the Supreme Court of the United States said, that this particular individual is entitled to an orderly disposition of her claims.

Mr. KENDALL. In your testimony this morning, Mr. Starr, you said, "We go to court and not on the talk show circuit. We are officers of the court who live in the world of law. We have presented our cases in court." That is at page 36 of your testimony.

Now, Mr. Charles Bakaly, your press spokesman and public relations adviser, has been on, by my count, 10 talk shows and is on Nightline tonight. I would be happy to read them to you. This is from late April. But does that sound about right, that he has been on 11 talk shows?

Mr. STARR. That probably sounds about right, but I would have to do the count. But let me say that no lesser authority than Archibald Cox talked, very eloquently and movingly, about the public information function of a prosecutor's office. Not only do we have the right, we have the duty to engage in a proper public information function, because this is the public's business. We must do so in order at times to combat misinformation that is being spread about, including at times by lawyers who frequently claim that their clients have been grossly mistreated, which is what criminal defense lawyers are paid to do.

Mr. KENDALL. Mr. Starr, I take it there would be no disagreement that you, as a United States prosecutor, are under a legal obligation to protect the secrecy of the grand jury process?

Mr. STARR. Yes, there is no dispute whatsoever.

Mr. KENDALL. No dispute. Indeed, if you turn to tab 17 of the materials, you wrote me a letter on February 6th, 1998, and if I could direct your attention to the second paragraph of that letter, I complained about leaks of grand jury information. You had replied, "From the beginning, I have made the prohibition of leaks a principal priority of the office. It is a firing offense, as well as one that leads to criminal prosecution."

You say also that you have reminded the staff that leaks are utterly intolerable. Am I reading that correctly?

Mr. STARR. Yes, you are reading it correctly.

Mr. KENDALL. And has anybody been fired from your office, Mr. Starr, for leaking?

Mr. STARR. No, because I don't believe anyone has leaked grand jury information, Mr. Kendall.

Mr. KENDALL. On the day this story broke in the press, which was Wednesday, January 21, you issued a press release. Do you recall that press release?

Mr. STARR. Could you say that again? On January—

Mr. KENDALL. On January 21st, the day the Washington Post story ran, you issued a press release about your information policy.

Mr. STARR. Do you have that here?

Mr. KENDALL. Yes, I do. Let me direct your attention to 27.

Mr. STARR. Twenty-seven.

Mr. KENDALL. And also we have a blowup of this press release on the easel. Now, it is a very short press release, but I will give you a moment to read it.

Have you read it?

Mr. STARR. I have.

Mr. KENDALL. In your testimony this morning you described the litigation that your office has been involved in at page 36. You said you faced an extraordinary number of legal disputes on issues of privilege, jurisdiction, substantive criminal law and the like. Do you see that at the top of your testimony?

Mr. STARR. Yes, I do see that.

Mr. KENDALL. You did not mention leak litigation in that list, I observe.

Mr. STARR. Yes, that is correct.

Mr. KENDALL. In fact, we have litigated on a number of occasions, producing by my count at least five district court opinions which have all been unsealed and in the binder, and one court of appeals decision on this matter; have we not?

Mr. STARR. Yes, and in fact with respect to that, we did, Mr. Kendall—and I think you will agree—prevail in the court of appeals with respect to the issue that you are talking about; and I want to be careful about what I say, because I have found that some lawyers are very quick to suggest that certain comments made by prosecutors may run afoul of confidentiality requirements.

I think I can say this: The D.C. Circuit unanimously concluded that the procedures that you had urged were entirely inappropriate, improper, unauthorized by law, and that there had to be an

orderly process that was protective of very vital interests. That was a unanimous opinion by the D.C. Circuit overturning a process that you had urged upon the district court in your effort to find out as much information inside the prosecutor's office as you possibly could. So I hadn't even thought of that as one of the 17, but you are absolutely right.

That is part of our litigation record, and we are now in the process, as you well know, of additional litigation, and I think that judgment should be withheld—judgment should be withheld—with respect to this question until such time as there is a judgment, an ultimate judgment in this case, because I am confident that we have abided by our obligations. I am confident of that.

Mr. KENDALL. I take it you would agree with Chief Judge Johnson that enforcing rule 6(e), which enforces grand jury secrecy, is of the utmost importance to the integrity of the grand jury process?

Mr. STARR. Yes. Chief Judge Johnson has made it abundantly clear, and I agree with that, that the values of confidentiality of matters occurring before the grand jury is very important.

Mr. KENDALL. And she has also ruled, has she not, that due to the serious and repetitive prima facie violations of rule 6(e), a thorough investigation is necessary and is now being conducted. This, let me direct your attention to, is at tab 24, and that is her opinion which was just unsealed.

Mr. STARR. Tab 24?

Mr. KENDALL. Tab 24, page 20.

Mr. STARR. Yes, this is the October 30 and then the redacted version. And this, and I think this is fundamental fairness, requires this body to know that the law of this circuit permitted Mr. Kendall to say, "Here are articles. Look at the sourcing, we get to ask the prosecutor to come forward and to show that the prosecutor is not the source of this grand jury—or of this information." And that is the process that is under way now.

We are at phase 2. But the law of this circuit, under the Barry case, with which you are intimately familiar, is essentially a hair trigger. All it takes is a letter from Mr. Kendall saying, "Here is an article with ambiguous sourcing; I believe it may relate to the grand jury matters," and a prima facie case, as is said in the law, may be established.

And in this district, and I think this is a major issue for the administration of justice, in high-profile cases, such as Congressman Rostenkowski and Mayor Barry; again and again, the criminal defense bar of this jurisdiction is rushing into court and saying there are grand jury leaks—

Mr. KENDALL. Mr. Starr, I don't mean to interrupt you, but I only have 30 minutes.

Mr. STARR. I am sorry.

Mr. KENDALL. In fact, Judge Johnson had before her 24 submissions from us as to what might be leaks from the independent counsel's office; did she not?

Mr. STARR. And we are in the process of litigating those, as you know.

Mr. KENDALL. How many did she find there was prima facie reason to believe your office committed these leaks?

Mr. STARR. I think you know the answer to that. Under the hair trigger Barry standard, where almost anything will satisfy—and the D.C. Circuit noted that; you cited the D.C. Circuit’s opinion—the D.C. Circuit’s opinion makes it very clear, as you know, David, that the burden on the moving party is quite limited. That is not a quote, but that is the idea. It is a very limited burden that you have.

Mr. KENDALL. I think the answer to my question was all 24. And are you saying that the journalists invented sources like “prosecutors painted a different picture,” “sources in Starr’s office tell us,” “sources near Starr,” “prosecutors suggest”; does the media make up those quotes, Mr. Starr?

Mr. STARR. I am not here to accuse the media of anything. I am here to say that fairness requires us to be able to litigate this matter, which, as you well know, is under seal, and to litigate that in an orderly way, and then to come to a judgment as to the significance of that.

But I will simply say that the law of this circuit makes it quite easy for you to say, “Look at this sourcing. I get to now put the burden on the prosecutor to come forward and show evidence that the prosecutor is not the source.” David, that is what we are doing.

Mr. KENDALL. Mr. Starr, in fact there has been no case remotely similar to this in terms of the massive leaking from the prosecutor’s office. I think we know that.

Mr. STARR. I totally disagree with that. That is an accusation, and it is an unfair accusation. I completely reject it, and I would say, David, let’s wait until the litigation has concluded. You are asking to—and especially with the rules being what they are on a prima facie case—you are asking, let’s now come to judgment after about 10 minutes of the first half. That is not fair.

Mr. KENDALL. May I direct your attention now to the exhibit that we have displayed up there. It is 27.

Mr. STARR. This is, I am sorry, number 27?

Mr. KENDALL. Yes, it is your press release on the first day of the Lewinsky story breaking. It is a press release on the letterhead of the Independent Counsel’s Office. We secured it from your office through a Freedom of Information Act request. It is under your name. It says, “Independent Counsel Kenneth W. Starr issued the following statement today from his office in Washington D.C.” And then it says, “Because of confidentiality requirements, we are unable to comment on any aspect of our work.”

Is that what you announced to the world on January the 21st?

Mr. STARR. Yes, and I must say, I think that this is inconsistent with the duty of a prosecutor to provide appropriate and lawful public information. I think it is the duty of the prosecutor to combat the dissemination of misinformation as long as the prosecutor can do that without violating his or her obligations under Rule 6(e). And that is the position, David, as you know, of the Justice Department.

Mr. KENDALL. Did you issue any press release admitting that you were talking about aspects of your investigation?

Mr. STARR. I am sorry, could you say that again?

Mr. KENDALL. After the press release which you now said—and I have forgotten your exact phrase. What was it, that you would not have issued it now?

Mr. STARR. No——

Mr. KENDALL. Does it depend on what you mean by “comment”?

Mr. STARR. No. In terms of being able to provide a public information function, it depends upon how broadly one wants to read a particular document. This is not a legal document, it is a statement of policy, and ordinarily, in contrast to what most prosecutors do, we try to treat all individuals, those, for example, charged with crime, with complete fairness. We do not go out and hold press conferences and the like. That is our methodology and our approach. But we follow Justice Department policy, and I frankly think that this comment is an overbroad statement, because it is incompatible with DOJ policy.

Mr. KENDALL. It is your comment, though, Mr. Starr. It is what you wanted the world to think you were doing in the Lewinsky investigation; is that not a fact? It is your press release.

Mr. STARR. Well, except I think it is still—you are talking about a press release, you are not talking about a filing in court and the like. And what we were, in fact, doing virtually contemporaneously with this was issuing—it may not have been contemporaneously, and perhaps you will guide me to that, but we were being accused, and we have heard it all day long today, about the events at the Ritz Carlton, and I felt duty-bound to provide public information that I thought was appropriate about the conditions that Ms. Lewinsky found herself in, and that the character assassination by her then-attorneys no longer—at least one is no longer her attorneys.

Mr. HYDE. Mr. Kendall, your time is up. You may want to get into the facts. Do you need additional time?

Mr. KENDALL. Chairman Hyde, I think I would like additional time.

Mr. HYDE. How much time would you like?

Mr. KENDALL. I think that the analysis—I am sorry, what did you say?

Mr. HYDE. I was going to say, is 15 minutes helpful?

Mr. KENDALL. I would like—that won't be enough.

Mr. HYDE. You are being coached by Ms. Waters here now. That doesn't count. How much?

Mr. KENDALL. Your Honor, another hour.

Mr. HYDE. Another 30 minutes?

Mr. KENDALL. Could I have another hour?

Mr. HYDE. How about 30, so you can get into the facts.

Mr. KENDALL. I thank the Chair for 30 minutes. I think, though, that these are the facts, Your Honor. How this analysis was done, the campaign to disseminate information against the President is very much a part of the fairness of the document which your committee is having to consider.

Mr. HYDE. Very well.

Mr. KENDALL. Is the analysis reliable, is it fair, does it present the facts, have proper procedures been followed?

Mr. HYDE. I see. Well, the gentleman is recognized then for an additional 30 minutes, but that should wind it up. So you have 30 more minutes.

Mr. KENDALL. Mr. Starr, you were right. You did issue a press conference about Ms. Lewinsky's treatment at the Ritz Carlton. That was a press release, it was on the record, everybody knew you were saying that. You were accountable. To use your phrase, you were transparent. But you also spoke frequently on background to the press. And my question to you is you and those around you, your subordinates—

Mr. STARR. Yes, be careful when you say the "you," because I do not speak frequently or otherwise to the press.

Mr. KENDALL. Did Professor Dash give you any advice as to what should be on background and what on the record?

Mr. STARR. We discussed with Sam a variety of issues. I would have to search my recollection with respect to any specific observations that Sam gave us with respect to this.

But let me say this: If you look—because your comments to the Chairman, whom you called Your Honor, and I have been tempted to do that most of the day, because you and I are both accustomed to being in courthouses—when you look at the information that we had in our Office and the FBI, as opposed to information that you had access to, it never, never entered the public domain.

For example, the dress, the DNA, the test results, those were never in the public domain, because you did not have a witness in your joint defense arrangements who you could debrief and tell you, because it was the distinguished judge who is the head of the FBI and a handful—

Mr. KENDALL. Mr. Starr—

Mr. STARR. No, you are talking about fairness. It is time for some fairness with respect to all of these charges that keep being bandied around without any kind of judicial determination that there is, in fact, wrongdoing under 6(e).

Mr. KENDALL. My question was simple, Mr. Starr. My question was why would you speak on background? Why not be accountable? Why not be transparent? I have never protested a press release which you have issued, have I?

Mr. STARR. No, you have not.

Mr. KENDALL. And I think that there may well be times as a prosecutor when it is necessary to correct misinformation. You have sometimes done that. It is necessary to get the facts out so that people aren't misguided. But why speak off the record on background? Why not be accountable?

Mr. STARR. It depends on the circumstances, and I will say this: I believe the Justice Department practice, it certainly was the practice when I was there; I will hazard that it is still the practice of the Justice Department, that these are judgment calls as to whether the prosecutor wants to make herself or himself part of the story.

A specific example: If someone comes to us with a specific allegation of wrongdoing on the part of one of our prosecutors—perhaps a criminal defense lawyer who has said the prosecutor did the following bad things—it may be utterly bogus, because people do, in fact, lie about what happens to their clients, I am sorry to say. We

do not want to in any way be part of a story as to whether—and obviously we can't talk about matters occurring before the grand jury, but we can, in fact, respond to a suggestion that the FBI in some way or a prosecutor in some way conducted herself or himself improperly. But it is quite wise to say—

Mr. KENDALL. Then why not say it on the record? Why the secrecy?

Mr. STARR. You are asking essentially about press policy as opposed to the constitutional issues that have brought us all here, and if this is an oversight hearing with respect to the press policy of the Independent Counsel's Office, or if that is what the President's lawyer wants to spend his time doing, then that is your prerogative. Let me tell you what our press policy is.

Mr. KENDALL. Well, Mr. Starr, I only have got 30 minutes. I asked you, I think, a simple question, but let me move on.

You yourself executed an affidavit in the leaks investigation; did you not?

Mr. STARR. David, this matter is in litigation, and, Mr. Chairman, as a matter of fairness, I have to be careful about what I say because he may tell me that it is not—it is just not right to be in litigation under seal before the district court and to be cross-examined by the President's attorney with respect to that matter which seems to have no germaneness whatever, although—

Mr. KENDALL. Mr. Starr, I was going to ask you about an affidavit, a sworn declaration, which you yourself executed, which is not under seal in the leaks proceeding. But I will move on if this is not something you want to respond to.

Mr. STARR. Well, David, I just think if you are talking about the leaks litigation, that is the point, it is in litigation. Why don't we allow that litigation to go forward, instead of individuals, Members of Congress who talk about fairness, jumping to the conclusion that there has been a violation when there has been no adjudication of anything beyond the existence under the law of this circuit of a prima facie case.

That is unfair. It is unfair to my career prosecutors, it is unfair to investigators, it is wrong. And, just to finish the point, when we had highly sensitive information that Mr. Kendall did not have, the DNA on the dress, that was held within our Office and the FBI. There was no dissemination of that information.

But what happens is Mr. Kendall and others interview witnesses, and any criminal defense lawyer, and if you see fit to inquire into the joint defense arrangement in existence here, I would be grateful. I know you want to move forward with these proceedings, but the joint defense arrangement that has been in effect in this operation is a very significant aspect of the very issues that Mr. Kendall is now raising before this committee, because one of the issues in 6(e)—

Mr. KENDALL. Excuse me, could I direct your attention to tab 15? I think you have answered the question, and I would like to move on. I am running against the clock.

Mr. STARR. I am sorry, Mr. Kendall. I have been here since 10 o'clock, so forgive me.

Mr. KENDALL. I know, and I will move on.

Carol Bruce, Ms. Carol Bruce, was appointed Independent Counsel to investigate the Indian gambling casino matter; was she not?

Mr. STARR. Yes. The Secretary Babbitt matters, yes.

Mr. KENDALL. Are you aware of her press policy?

Mr. STARR. No, I am not.

Mr. KENDALL. It is indicated there at tab 15 that she held a press conference when she was appointed, and then said she did not anticipate making any further public comments until the investigation is completed.

You mentioned the experience of Ms. Lewinsky at the Ritz Carlton on Friday, January 16, 1998. One of the reasons your agents held Ms. Lewinsky was that they—

Mr. STARR. I have to interrupt. That premise is false.

Mr. KENDALL. Let me rephrase it.

Mr. STARR. That is false, and you know it to be false.

Mr. KENDALL. I will rephrase the question.

Mr. STARR. She was not held.

Mr. KENDALL. Her own psychological state will speak for itself as to how she felt. It is in the record in her testimony.

Mr. STARR. You said she was held; you didn't say how she felt. You said she was held, and I think that is unfair to our investigators, and this issue has been litigated, David, as you well know, with respect to the constitutional rights of the individual involved. Excuse me.

Mr. KENDALL. During her sojourn with your agents—

Mr. STARR. Well, the Ritz Carlton is a very pleasant place to have a sojourn.

Mr. KENDALL. One of the purposes was to get Ms. Lewinsky to wear a recording device and surreptitiously record Mr. Jordan or the President; was it not?

Mr. STARR. It was not. And I know that there is testimony, and this has been referred to, but let me explain. She was asked and given the opportunity, which she turned down, to be a cooperating witness. And we explained to her—we did not invent this, this is all traditional prosecutorial activity and techniques—one of the things that a cooperating witness can do is to assist us in consensual monitoring. We described that at a high level of generality, it is my understanding, and I believe my prosecutors, in fact, conducted themselves consistently with what I have just told you.

Mr. KENDALL. Could you turn to tab 7, and could we have—

Mr. STARR. I am sorry, tab 7?

Mr. KENDALL. Yes, tab 7 of the binder.

You may have read the Time Magazine essay by Messrs. Ginsburg and Speights in which they state the following: "The government didn't just want our client to tell her story, they wanted her wired. They wanted her to record telephone calls with the President of the United States, Vernon Jordan and others at their will."

You are familiar with Mr. Ginsburg's charge?

Mr. STARR. Mr. Ginsburg is wrong, and he must know that he is wrong. He was wrong then, and it is a calumny to repeat that now. Mr. Ginsburg was not known for his consistency of articulating positions, nor was he known for his consistency in dealing with facts. I would say that he was rather fast and loose with the facts, and if you are going to rely in this proceeding on a Time Magazine

essay by Bill Ginsburg, then I think the standards are not quite as lofty as I thought they would be this evening.

Mr. KENDALL. Mr. Starr, what is an FBI 302 form?

Mr. STARR. An FBI 302 form is a report of interview by FBI agents with a witness.

Mr. KENDALL. Now, you categorically denied wanting to have Ms. Lewinsky wear a wire or secretly tape record the President or Mr. Jordan when the charge was made in the Time article; did you not? You categorically denied that.

Mr. STARR. Are you saying at the time of this Time article?

Mr. KENDALL. At the time of that Time article, you denied Mr. Ginsburg's charge; did you not?

Mr. STARR. I believe that we did, but I am just not recalling specifically how we did it.

Mr. KENDALL. You certainly denied it—

Mr. STARR. We have had a number of charges, so you will have to remind me of where my rebuttal is.

Mr. KENDALL. Let me direct you to tab 12 in the volume. This is your later letter to Steve Brill. We are displaying the page there. It is page 7. You don't have to read your entire letter.

Mr. STARR. Okay, page 7.

Mr. KENDALL. Do you see where it is indented 6? It is tab 12, page 7 of the exhibit, your own letter. You say, "This is false. This Office never asked Ms. Lewinsky to agree to wire herself for conversation with Mr. Jordan or the President. You cite no source at all, nor could you, as we had no such plans."

Have I read correctly your letter?

Mr. STARR. Yes, you have.

Mr. KENDALL. All right. Now, when you wrote the letter, did you review—you were not present at the Ritz Carlton, were you?

Mr. STARR. No, I was not.

Mr. KENDALL. Did you review with Mr. Emmick, for example, what had happened there?

Mr. STARR. Yes, I have reviewed with a number of—well, in terms of this particular letter, if you are asking did I review the contents of the Ritz Carlton in connection with this as opposed to what we had already done in terms of the allegations being made at or around the time, I do have very vivid recollections of discussions with respect to the circumstances of—

Mr. KENDALL. Do you remember—

Mr. STARR. —of the Ritz Carlton. You are asking me in connection with this letter did I have a conversation with one of my colleagues, and I would have to review notes and so forth.

Mr. KENDALL. I apologize for my speed, but I don't have much time. I don't usually talk this fast, Mr. Starr.

Would you look at tab 13.

Mr. STARR. Okay.

Mr. KENDALL. At tab 13 is the FBI 302 form describing—that is not Mr. Ginsburg or Mr. Speights, is it? It is one of your own agents. We don't know who because the name is blacked out, but if you look at page 5 of that exhibit, it says—at 11:22 p.m., it says A.I.C. Emmick talked to Bernard Lewinsky, that is Ms. Lewinsky's father. "Cooperation, interview, telephone calls, body wires and testimony were mentioned."

Do you see that?

Mr. STARR. Yes, I do.

Mr. KENDALL. And then do you see down below the 11:37 p.m. entry, Ms. Lewis has arrived on the scene, Ms. Lewinsky's mother, and she expresses, Ms. Lewinsky has expressed concern about what is being requested of her. She says, according to the FBI 302, "What if I partially cooperate?" That is as recorded by the FBI agent. "Marsha Lewis asks what would happen if Monica Lewinsky gave everything but did not tape anything."

Do you see that?

Mr. STARR. Yes, I do.

Mr. KENDALL. It was in the grand jury that the events of Friday, January the 16th, were presented through the testimony of Ms. Lewinsky; was it not? Was it her second appearance?

Mr. STARR. Yes, I believe that is right.

Mr. KENDALL. And do you remember—do you have the appendices to your volume?

Mr. STARR. I can get them.

Mr. KENDALL. I don't think we will need to, because this is a famous passage. The grand jurors—your prosecutors had no more questions, and the grand jurors themselves began to inquire about the events that day. One of them said, at page 1143, "We want to know about that day. We really want to know about that day." And this elicited then from Ms. Lewinsky, who was under oath, a tearful description of what had happened to her. She asked Mr. Emmick to leave the room; did she not?

Mr. STARR. That is my recollection of the transcript, yes.

Mr. KENDALL. And, in fact, she said that she was told on Friday, January the 16th, by your agents that she would have to place calls or wear a wire to call Betty and Mr. Jordan and possibly the President.

"Question: And did you tell them you didn't want to do that?"

"Yes."

Was that Ms. Lewinsky's testimony?

Mr. STARR. Yes, that is her testimony.

Mr. KENDALL. I think the point was made earlier, but the affidavit that Ms. Lewinsky filed had not been mailed by her attorney until the end of the day, Friday, January the 16th, had it?

Mr. STARR. I believe that is right in terms of the timing, but I would have to reconstruct in terms of the actual timing of the mailing. I am sorry, I would have to double-check that.

Mr. KENDALL. Mr. Starr, you have repeatedly said that the Attorney General asked you to take on this matter—

Mr. STARR. Well, that is your characterization. I have said that we collaborated with the Justice Department, and the Attorney General came to her decision. We brought it to her attention. We did say that we thought the steps that we had taken had been within our jurisdiction, but we were concerned about whether any additional step could be taken properly within our jurisdiction, and that is how the discussions began.

Mr. KENDALL. In fact, you requested that the matter be referred to you; did you not?

Mr. STARR. At some point during the discussion in our own deliberations we came to the view that we felt that because of the in-

volvement, and I will be very specific here, of Vernon Jordan, that this was related to our existing jurisdiction. The Attorney General disagreed with that, but that was our view.

Here was Linda Tripp, who was a witness in the Travel Office matter and the Vincent Foster documents matter and the Vincent Foster death matter, and she had come to us with information. So we felt very comfortable—and she said, “I am being asked to commit crimes. I am being asked to commit perjury.” We felt comfortable that we were within our jurisdiction at that juncture, but we did feel that there was a jurisdictional issue from that point forward, which we worked on collaboratively with the Justice Department.

But we did, in fact, send a letter indicating that we felt that this was related to our jurisdiction. But I hasten to note that the Attorney General disagreed with that and said, no, it is not related to your existing jurisdiction, but we think your Office should investigate it. We can’t, because the President is implicated.

Mr. KENDALL. In her transmission to the Special Division, the Attorney General stated “Independent Counsel Starr has requested that this matter be referred to him.” Is that not the case?

Mr. STARR. You will have to refer me.

Mr. KENDALL. I am sorry, I don’t have that in your binder. I will represent that to you—

Mr. STARR. I certainly am going to accede to your representation, and it certainly is true, as I just indicated, that we did, in fact, send a written submission indicating that we felt that this was related to our jurisdiction. The Attorney General felt we should have jurisdiction, but determined that under the statute it should be an expansion of our existing jurisdiction.

Mr. KENDALL. Mr. Starr, when did you first learn, you yourself, that there might be an audiotape with a conversation involving the President and a young woman?

Mr. STARR. The young woman, Monica—

Mr. KENDALL. A young woman.

Mr. STARR. I’m sorry?

Mr. KENDALL. A young woman.

Mr. STARR. I think we have had questions about that, and I have been asked that, and I am searching my recollection. But let me say this: If you are talking about Monica Lewinsky, and I don’t know that you are, you didn’t use her name, but the first I knew, to the best of my knowledge and recollection, of Monica Lewinsky was in January of 1998.

Now, I had questions, and they seemed to me to suggest that there is some information with respect to information that may have come to me in November of 1997 with respect to tapes, and it was all very vague and shrouded in mystery, and I said I will be happy to respond if I get some additional information.

But with respect to Monica Lewinsky, which is what I assume we are here to talk about, I did not know anything about Monica Lewinsky, to the best of my recollection. I don’t think I ever had occasion to meet her or otherwise hear about her until January of 1998.

Mr. KENDALL. Were you aware of how Ms. Tripp came to communicate with your office in January of 1998?

Mr. STARR. I was told—I will be very specific, and I can be very brief. I was at the American Bar Association Journal Board of Editors meeting when the initial contact was made with one of the associate independent counsels. I do not believe—that was on January 8th, and I do not believe in that contact Linda Tripp's name was mentioned.

That information was brought back to Washington. The information was conveyed to a deputy independent counsel, who said information comes in the front door, and I'm not sure at that time that we knew who this person was. We were then called on January 12th by Linda Tripp, that was a telephone call, and I was made aware of the telephone call promptly thereafter. And that is when it was brought to my attention that there was information that we would proceed to act on.

Mr. KENDALL. Were you aware that your partner Richard Porter had played a role in steering Ms. Tripp to your office?

Mr. STARR. I know Richard. I am not aware of what his role was. I have since read about what his role was, but I did not in any way have any involvement whatsoever or participation in any way with whatever he did, and I have not conducted an investigation. There may be facts of which I am unaware that I should be aware in terms of before I formulate a complete response.

Mr. KENDALL. Could you turn to tab 2, Mr. Starr. It is a provision of the independent counsel statute. It is 28 USC 594(J). Do you see that?

Mr. STARR. Yes, I do.

Mr. KENDALL. And you have made the point that you kept your law practice, as you were legally entitled to do; you made, I think, over \$1 million each year for the last 4 from that law practice, again, as you were legally entitled to do. But in exchange for allowing private counsel to serve part time as independent counsel, the Ethics in Government Act enforced a very strict conflict of interest rule; did it not?

Mr. STARR. Yes, it is very specific, yes.

Mr. KENDALL. And that says that any independent counsel cannot have any person associated with the firm, not just a partner, represent in any matter any person involved in any investigation or prosecution under this chapter; is that correct?

Mr. STARR. I believe that's right. I would have to reread it, but I am going to simply accept your representation, but I think that is correct.

Mr. KENDALL. I call your attention to Exhibit 4, which is another 302 interview form, and that is for Ms. Lucianne Goldberg, tab 4.

Mr. STARR. Yes, I do have it.

Mr. KENDALL. At page 1232 of the exhibit, do you see that one of your agents is describing why Linda Tripp is nervous.

Mr. STARR. And where—I am sorry, I have not read this 302.

Mr. KENDALL. It's 1232.

Mr. STARR. Yes, I know, but what paragraph?

Mr. KENDALL. All right. It is the paragraph that begins, "In the meantime, because Tripp—"

Mr. STARR. It is not on my page 1232.

Mr. KENDALL. I beg your pardon. It is 1231.

Mr. STARR. Okay, I am sorry. All right.

Mr. KENDALL. "Goldberg called around to friends she has, including one in Chicago who works at the same firm Ken Starr does. This person recommended Goldberg call Jackie Bennett at the OIC. Goldberg advised that the OIC knew who this person is, and that this person is very nervous at this time." Did you ever have any reports from any source that some person at your law firm had expressed nervousness about this contact with Linda Tripp?

Mr. STARR. You are talking about at any time?

Mr. KENDALL. At any time.

Mr. STARR. Well, you have just brought this to my attention. But I do not know. I don't have a recollection of something being brought—you are talking about to my attention. No.

Mr. KENDALL. Did you cause any check to be made at any time before you sought jurisdiction in the Lewinsky matter as to whether any person in your law firm had any kind of an association with the *Paula Jones* case?

Mr. STARR. No, I did not. But I must say that what you pointed me to in the statute was representation, and I have read the 302 quickly for the first time. I have not had occasion to read this 302, and the 302 does not talk about representation; it talks about calling a friend.

Mr. KENDALL. It is possible, is it not, Mr. Starr, for the provision of legal advice of some kind to involve a representation, at least for conflict of interest purposes, even if there is no written retainer, there is no formal hiring of a person?

Mr. STARR. Well, I am not sure I would readily agree with that. Let me just say this. Conflict of interest analysis is, as you well know because you are a partner in a very prestigious law firm, is very technical and very complicated, and very careful evaluation has to be made, and that is why I am sure at your firm, as we do at our firm, the firm in which I am on leave of absence, we have a partner who is dedicated to the issue—to the analysis of these very issues. So these are things that you assess all the facts. What is a conflict? As you know, the issue of conflict is one that is at times a very—very much a judgment call that reasonable persons have to have an enormous amount of information in order to come to that judgment.

Mr. KENDALL. Mr. Starr, could I direct your attention to exhibit—tab 14, please. Do you have that exhibit?

Mr. STARR. Yes, I do.

Mr. KENDALL. That is a Washington Post article from June of 1997 indicating that your investigators are now probing rumors about the President; is it not?

Mr. STARR. It is an article about that subject, yes.

Mr. KENDALL. And indicating that State troopers, two who are named and quoted, Ronnie Anderson and Roger Perry, are being interviewed about rumors of affairs that the President had while he was Governor of Arkansas; is that correct?

Mr. STARR. That is what the story is about, but whether the story reflects the facts is obviously a different matter.

Mr. KENDALL. Did you cause any investigation to be done as to whether, in fact, your investigators were asking witnesses about a list of 12 to 15 women by name, including Paula Corbin Jones?

Mr. STARR. When this—and we were in Little Rock at the time, all of the attorneys were in Little Rock as we were assessing a very important issue, and when we were in the midst of our discussions, we were receiving urgent inquiries from The Washington Post asking about interviews, and you are quite right in pointing out that this was a Washington Post piece from June of 1997. They were talking about interviews that had been conducted in February, so it was old news, and we did then inquire, in light of this, we then did make inquiries internally of the FBI, because these are professional agents and we said, what kinds of questions are being asked; what is the purpose, and the purpose of the investigation was as we were moving forward in the Little Rock phase of our investigation, we wanted to make sure, as investigators should do and as prosecutors should do, that we had reached out and interviewed anyone who might have relevant information, and that is what we were doing. We were, in fact—

Mr. KENDALL. Relevant to this interview, did you go to the Attorney General and seek an expansion of your jurisdiction to accompany this particular investigation?

Mr. STARR. I guess I wasn't clear. This was the Whitewater phase of our investigation that is referenced here in the press we are talking about, in Little Rock; we are not talking about activity in Washington. And we were, in fact, interviewing, as good prosecutors, good investigators do, individuals who would have information that may be relevant to our inquiry about the President's involvement in Whitewater, in Madison Guaranty Savings and Loan and the like, and specifically, a loan from Madison Guaranty that we had information on in which we were not able to secure as much information as we would like, given the records of the bank and given Susan McDougal's lack of cooperation. As you know, as you well know, Susan McDougal was not cooperating with the investigation, and indeed, as we know, you spent time with Susan McDougal during the course of the trial representing the President's interest to communicate with her, as you are entitled to do. We are also entitled, just as you are entitled to reach out to your fellow criminal defense lawyers, we are entitled to reach out to witnesses who may have relevant information.

Mr. KENDALL. Did you use private investigators to do this investigation into the 12 to 15 women?

Mr. STARR. I beg your pardon? Private investigators?

Mr. KENDALL. Your GAO report, for the last three times, has a line item of approximately—it varies, but it is about half a million dollars, for among other things, private investigators.

Mr. STARR. No, we have never hired Terry Lenzner, David.

Mr. KENDALL. What private investigative—

Mr. STARR. But what we do do is we do hire retired FBI agents, and those are—I will have to look at—you are talking about an audit report, and if you want to guide me to the audit report, that's fine.

Mr. HYDE. The Chair has got to intervene. The hour is over quite a little bit. Mr. Lowell and Mr. Kendall have had 2 hours. Mr. Schippers has been waiting since 10 o'clock and is getting testy, which is his natural state. But Mr. Kendall, you will have an opportunity, a further opportunity to present and address the com-

mittee at length in extensio as you lawyers say, and offer whatever evidence, exculpatory or otherwise, you want. You will have a full opportunity before we go to any markup, if we go to a markup. So really, it is a long day. One must have some compassion for Mr. Starr, and if not——

Mr. STARR. Thank you, Mr. Chairman.

Mr. KENDALL. Mr. Chairman, I thank you, but I would simply request, Mr. Starr testified for two and a quarter hours; I am simply trying to get my fair crack at him. I would like to go into omissions from the referral and other areas.

Mr. HYDE. Well, I am sure——

Mr. KENDALL. I would come back tomorrow, if that were appropriate.

Mr. HYDE. Well, I don't think many of us want to come back tomorrow. But really you will have an opportunity to address the committee fully and produce whatever you want by way of evidence, witnesses, exculpatory material. We will not foreclose you, but the night is waning and we would like to get to Mr. Schippers, so with your kind indulgence, and I see you are putting your glasses away, which is a healthy sign.

Mr. Starr, do you want a little break?

Mr. STARR. No, Mr. Chairman. We are almost at my bedtime.

Mr. HYDE. We are at mine, I can assure you.

Ms. WATERS. Mr. Chairman.

Mr. HYDE. The gentlewoman from California.

Ms. WATERS. I would like to inquire of the Chair, what opportunity will we have to clarify what appears to have been conflicting information that we have received here today from our star witness?

Mr. HYDE. I would write a letter to Mr. Starr, if I were you. If I were confused about some of the evidence, I would write him a nice letter and I would say please straighten me out, and I bet he would answer you.

Ms. WATERS. I think it is a little deeper than that. It may go to perjury. This man is under oath.

Mr. HYDE. Well, he is under oath. Are you charging him with perjury?

Ms. WATERS. I would like clarification, and after the clarification is made, I can determine whether or not I would make that charge.

Mr. HYDE. Well, Ms. Waters, the Chair has to control this committee. We have been at it all day, and I think what you are asking at this late moment is an imposition on the committee, not to mention Mr. Starr, so you would not be recognized for that purpose. But I will recognize Mr. Schippers for 30 minutes.

Mr. SCHIPPERS. Thank you, Mr. Chairman.

Judge Starr, my name is David Schippers and I am the chief investigative counsel for the committee. Can you hear me?

Mr. STARR. Now I can. Thank you.

Mr. SCHIPPERS. I will try to be as brief as I possibly can, but I do have a little bit of territory to cover, as you well know.

I will begin with some of Mr. Kendall's statements and some of Mr. Kendall's questions to you. First of all, do I understand that there is such a thing as a hair trigger? You referred to a hair trig-

ger that would set off an investigation of whether or not there were leaks out of your office.

Mr. STARR. Yes.

Mr. SCHIPPERS. And that hair trigger can be and often is triggered by a defense attorney sending something to the judge claiming that there is a leak; is that right?

Mr. STARR. It is—yes, it is standard practice for criminal defense lawyers to charge leaks of grand jury information, their allies then pick up the charge, and suddenly it becomes conventional wisdom that there has, in fact, been some final adjudication, which is wrong as a matter of law and unfair, just in terms of basic human decency, because these are professional prosecutors that we are talking about.

Mr. SCHIPPERS. Thank you, Judge.

Mr. STARR. Yes, I am sorry.

Mr. SCHIPPERS. Do I understand that Mr. Kendall sent 27 of these such requests about leaks?

Mr. STARR. I think he had some 24 exhibits which again I have been reluctant to talk about, because it is in litigation. I mean the specifics are in litigation, as David knows.

Mr. SCHIPPERS. Well, Judge, if I were expecting someone to testify before a congressional committee and I wanted some questions to ask him about leaks, all I would have to do is send some letters to the judge and trigger this hair trigger effect, isn't that correct?

Mr. STARR. I don't want to suggest that the hair trigger is a non-existent trigger, but the burden on the defense lawyer is quite modest, and one of the things that we have learned, and I know this is your time, but I would just say, one of the things that we have learned in this investigation is that a lot of people, including Mr. Kendall, talk on background and the like, and the sourcing that is then used by the reporter becomes very important. Someone as responsible as Tim Russert sourced a story in such a way that it came from us. He was decent and honorable enough to say, no, it didn't come from Starr's office, it in fact, with all due respect, came from the Congress.

Now, you are not under a 6(e) obligation, so you can talk as freely as you would like, and indeed you enjoy Speech and Debate Clause immunity. However, prosecutors are very sensitive, especially in this jurisdiction in light of the hair trigger to a reporter who sort of says, "sources close to." Well, what does that mean? It can mean almost anyone. And I think that one of the things that this litigation will, in fact, show, is that that becomes an issue ever so quickly as we saw in the Marion Barry case and as we saw in the Dan Rostenkowski case.

Mr. SCHIPPERS. Judge, Mr. Kendall mentioned massive leaking. I am going to ask you a specific and direct question. As you sit there, do you have any information, evidence or anything in your possession to indicate that anyone in your office has leaked anything? Any 6(e) material?

Mr. STARR. Well, again, it depends on what one means by 6(e), because there are issues. I have a press release—

Mr. SCHIPPERS. With your information.

Mr. STARR. Within my understanding, and I think that my understanding is correct, no, I can say here that now. But I also think

that it is important for this litigation that I had talked about to go forward and let's see what happens in that litigation, which is again under seal, but there is an orderly process, just as the Supreme Court said in the *Paula Corbin Jones* case. Let's allow that orderly process to go forward.

Mr. SCHIPPERS. Fine. Sir, you were asked whether you were present during the taking of the 302s, the FBI interviews, whether you were present at the grand jury appearances of all of these witnesses; whether you were present during the course of interviews and depositions, and you answered no; isn't that correct?

Mr. STARR. That is correct.

Mr. SCHIPPERS. But you did have experienced, highly experienced professional agents and prosecutors present at each and every one of those occasions, did you not?

Mr. STARR. I did.

Mr. SCHIPPERS. And you relied upon the integrity, the honesty and the decency of those agents and investigators, did you not?

Mr. STARR. I did, and very proudly so.

Mr. SCHIPPERS. All right. I notice that Mr.—we have heard an awful lot about fairness here, Judge Starr, but I notice that when you sat down this morning you were given about 2 inches of documents to review. How long did you have to review those before Mr. Lowell began questioning you?

Mr. STARR. Unless Mr. Lowell shipped it over this morning, I left the office at 9:15 a.m. to come to the House of Representatives, and I had not seen it. If it is waiting on my desk, then I suppose he gave me some notice, but no, in terms of actual notice, I had no notice whatsoever.

Mr. SCHIPPERS. You were also given a book filled with some 63 tabs when Mr. Kendall began to question you. When is the first time you saw that book?

Mr. STARR. This evening, when I came in after having a sandwich.

Mr. SCHIPPERS. And of course they had, they were in possession of those books before you left to have your sandwich. They didn't give it to you to review, did they?

Mr. STARR. No, unless it is sitting on my desk—it is not. They did not, and I am confident I have to be careful what I say, because of not having universal facts, but Mr. Schippers, no, I had no advance notice that this was going to be inquired into.

Mr. SCHIPPERS. You were questioned about specific, one line, two lines inside of this 2½-inch document and you had to go and hunt for the answers, didn't you, Judge?

Mr. STARR. I did.

Mr. SCHIPPERS. Now, we have heard over 2 hours of questioning, almost 3 hours of questioning if we include the Democratic members of this committee, and I haven't heard anybody ask you one question about the facts of these cases. So with your permission, Judge, I am going to take a few minutes and get to the facts and the issues that are really before this committee.

First of all, Mr. Conyers in his opening statement made a remark about a recent delivery of four boxes of documents. That delivery was made, what was it, yesterday or the day before to the Ford Building, was it not, Judge Starr?

Mr. STARR. Yes, I believe it was the day before.

Mr. SCHIPPERS. Now, that wasn't your idea to deliver those, was it?

Mr. STARR. No, it was not.

Mr. SCHIPPERS. It was in answer to a request by Mr. Conyers that you provide additional information, wasn't it?

Mr. STARR. Yes. Well, it was a congressional request. I believe it originated with Congressman Conyers.

Mr. SCHIPPERS. And you were just—

Mr. STARR. We have had so many requests. We have had individual requests from individual Members. I don't mean to complain, but we don't have a congressional office. We are prosecutors and lawyers, so we do the best we can. We have had a virtual flurry of requests for information, but I believe Congressman Conyers was one of the requesters with respect to that information and we tried to be responsive, yes.

Mr. SCHIPPERS. Now, Judge Starr, you have been investigating President Clinton and the Monica Lewinsky matter and other matters involving perjury, obstruction of justice, conspiracy and so on for some 7 or 8 months; is that correct?

Mr. STARR. Yes, I guess now 10 months.

Mr. SCHIPPERS. Have you been given any exculpatory evidence by the President, or have you been offered any exculpatory evidence or witnesses by the President in that time?

Mr. STARR. I don't believe that we have. I would want to check, and if I have additional information I would provide it to the committee. But as I sit here this evening, I am not aware of any suggestion that there is exculpatory evidence, other than the discussion we have had here today with respect to what one individual witness may have said. But no, no witness has come forward to say, Monica Lewinsky made it all up. No one has suggested that. No one has suggested it. So I am sorry to be going on, but the point is—

Mr. SCHIPPERS. I think you have answered the question.

Mr. STARR. We stand ready to receive information, but no one has come forward.

Mr. SCHIPPERS. That was my next question. If information were available and had been given to you, you would have considered that along with all of the other information, is that correct?

Mr. STARR. Oh, yes, absolutely. In fact, one of my colleagues reminds me that we specifically asked in the flurry of this investigation, we asked Mr. Kendall by letter, please provide us with any exculpatory information. Mr. Kendall said, there was nothing to exculpate, or that there was nothing to worry about exculpation from.

Mr. SCHIPPERS. Now, there was a great deal of discussion throughout the day about the difference between your investigation and that of Mr. Jaworski. There was no Independent Counsel Act when Mr. Jaworski was performing his duties, was there?

Mr. STARR. That is correct. He had no statute to look to at all.

Mr. SCHIPPERS. Your actions as regards referrals to this committee are alluded to by statute; are they not?

Mr. STARR. They are indeed.

Mr. SCHIPPERS. And you tried to the best of your ability to comply with those statutes.

Mr. STARR. That is correct. I would just add that there was no experience for this, happily for the country, under this provision of the statute. So we were sailing in uncharted waters and trying to come to the best professional judgment we could about what Congress intended and wanted in this provision that required us to report to it.

Mr. SCHIPPERS. One aside. In the 63—have you had an opportunity—I know you haven't had a reasonable opportunity, but have you had any opportunity to page through Mr. Kendall's 63 tabs?

Mr. STARR. Only as he was guiding me.

Mr. SCHIPPERS. Well, I have, Judge Starr, and I note that it contains several newspaper articles, several magazine articles, several self-serving letters from the President's counsel, and not one word, not one word of evidence.

By the way, the other 2 inches is equally devoid of evidence.

During your term as Independent Counsel, sir, and with particular reference to your investigation of the Lewinsky matter and the perjury and the obstruction of justice and other related criminal activity, you were under the guidance and control of the Attorney General of the United States, were you not?

Mr. STARR. Well, I was certainly under her ultimate supervision in terms of the provisions for removal, but of course the Independent Counsel is to be independent of her daily supervision.

Mr. SCHIPPERS. I mean that in the sense that if you were to be involved in anything untoward, unethical, illegal, the Attorney General had the absolute ability to fire you for cause; did she not?

Mr. STARR. Yes. I mean the statute is clear that an independent counsel can be removed for good cause.

Mr. SCHIPPERS. Now, you have been pilloried and vilified in newspapers and magazines and here, unfortunately. Has the Attorney General ever indicated that she had any thought of firing you for cause?

Mr. STARR. I am not aware of any expression of any issue at all with respect to good cause. In fairness to the Attorney General—because of the flurry of allegations that are just constant—there is a process of evaluation on her part, but no. I meet with the Attorney General episodically and her senior staff, and there has never been a suggestion that there is good cause to remove me as Independent Counsel. At least I am not aware of any suggestion.

Mr. SCHIPPERS. Well, has the Attorney General ever questioned you about conflicts of interest or anything like that?

Mr. STARR. No, the Attorney General has not, but the Attorney General has a process through the Office of Professional Responsibility or otherwise exercising her jurisdiction, but thus far, the issues that have been acted on, we have been cleared on, or else no action has been taken over the years of my stewardship as the Independent Counsel.

Mr. SCHIPPERS. Now, all of these specific factors that various people have asked you if you reported to the Attorney General when you met her on the 16th of, when was it, the 15th of January?

Mr. STARR. Well, we met with the Deputy Attorney General on the 15th and then there was—and again, I did not have these meetings, as it turned out.

Mr. SCHIPPERS. There was a litany of things that you apparently allegedly did not tell the Attorney General.

Mr. STARR. Oh, yes, yes, I am sorry, yes.

Mr. SCHIPPERS. But of course shortly thereafter all of that litany of information became available to the Attorney General.

Mr. STARR. If it wasn't available to begin with. Part of the quarrel that I have had with a number of the suggestions about what I should have told the Attorney General is that these were all in the public domain. As I said in response to questions very early, or earlier in the day, certain things did not occur to me as relevant or germane. It may be that others would say, gee, isn't it relevant that you were asked by Bob Fiske to consider preparing an amicus brief in the *Paula Corbin Jones* case. I didn't view it as—well, it just didn't occur to me.

Mr. SCHIPPERS. That's fine. But it did become available and no action was taken.

Mr. STARR. No. That is correct.

Mr. SCHIPPERS. Now, let's get to this January 16 meeting with Monica Lewinsky that so much has been made of.

Mr. STARR. Yes.

Mr. SCHIPPERS. I have been a prosecutor too, and Monica Lewinsky from my reading was treated very, very nicely by your agents.

Mr. STARR. Thank you.

Mr. SCHIPPERS. I believe— I hear laughter from the left, but I often here laughter from the left, even when you were testifying, and I didn't really think it was fair to laugh at you when you were testifying either.

Mr. STARR. Well, I think a fair assessment of the record will show that we wanted her cooperation, and we treated her with dignity and with respect, but we were prosecutors and we were investigators investigating crime. That is a serious matter and we made it very clear to her, she is in a serious situation. But we treated her with dignity and we certainly took every step to make sure—

Mr. SCHIPPERS. I wonder how many of your accusers have read the log that was kept of every minute of that day.

Now, sir, there was also some question as to why Ms. Lewinsky was not allowed to call Mr. Carter. Mr. Carter had been given to Monica Lewinsky by Vernon Jordan, isn't that correct?

Mr. STARR. That is correct.

Mr. SCHIPPERS. And the evidence available to you at that time, phone evidence indicated that perhaps Mr. Jordan had been in telephonic contact with the President at the time he was getting her that lawyer; isn't that correct, sir?

Mr. STARR. That is correct.

Mr. SCHIPPERS. And in an abundance of caution, you did not want the President to know that Monica Lewinsky was talking to you; isn't that right?

Mr. STARR. That is correct.

Mr. SCHIPPERS. And that is a perfectly valid prosecutorial move, isn't it?

Mr. STARR. Yes, very traditional. Nothing out of the ordinary.

Mr. SCHIPPERS. As a matter of fact, later Ms. Lewinsky decided she didn't want to be represented by Mr. Carter on that day; isn't that correct?

Mr. STARR. Yes. She came to a decision to be represented by Mr. Ginsburg.

Mr. SCHIPPERS. And she called Mr. Ginsburg and she talked to him, didn't she?

Mr. STARR. Yes. I was going to say that was in consultation with her family, so I don't know to what extent Ms. Lewinsky was being guided by her parents, and especially Dr. Lewinsky.

Mr. SCHIPPERS. But in any event, she changed lawyers from the one that had been provided to her indirectly by the White House to an independent lawyer from the West Coast, is that right?

Mr. STARR. Oh, yes, and one who was well-known to the family.

Mr. SCHIPPERS. Doesn't the evidence demonstrate that from the 16th on, from that day on when she was unavailable, there was a 3-day frenzy at the White House to try and find Monica Lewinsky by phone, by beeper, and that Mr. Jordan, Mr. Carter, and Ms. Currie were in constant efforts to reach Monica Lewinsky; isn't that a fact?

Mr. STARR. I believe that is true.

Mr. SCHIPPERS. Does that indicate to you that they were a little bit afraid of what Monica might say?

Mr. STARR. I think there was concern.

Mr. SCHIPPERS. By the way, when Monica Lewinsky was—I am not going to say being held, because I don't want to run into trouble. When Monica Lewinsky was in with your agents—

Mr. STARR. And prosecutors.

Mr. SCHIPPERS. She was never questioned about criminal activity, was she?

Mr. STARR. No, she was not.

Mr. SCHIPPERS. She was not questioned at all about criminal activity until she was represented by counsel, isn't that right?

Mr. STARR. That is absolutely right, and that is why not one word in this referral comes from any information that was gleaned or gathered on the evening of January 16.

Mr. SCHIPPERS. As a matter of fact, the first time Monica Lewinsky testified in the grand jury was some 7 months later, correct?

Mr. STARR. It took a long time and a new set of lawyers, two very distinguished lawyers here in Washington.

Mr. SCHIPPERS. And if she was afraid and if she was disturbed on January 6th, she was sure as heck over it by August 6th, wasn't she?

Mr. STARR. Well, she was at least—yes, she seemed to be. But I am very fearful of saying anything about state of mind, especially in light of a comment I have heard with respect—but in any event.

Mr. SCHIPPERS. Do you have before you, Judge Starr, the first two-incher, the one that Mr. Lowell gave you? Would you turn to tab 35, please. There are a whole series of remarks on page 35, and I think there was a—356 is the page number; that is where tab 35 begins. The first bullet, do you have it, Judge?

Mr. STARR. I do.

Mr. SCHIPPERS. The first bullet says Monica Lewinsky testified before the grand jury that quote, "No one ever asked me to lie and I was never promised a job for my silence." Is that right?

Mr. STARR. Yes.

Mr. SCHIPPERS. She also testified, "But nobody told me to tell the truth, either," didn't she?

Mr. STARR. Absolutely.

Mr. SCHIPPERS. Monica Lewinsky also testified that she had a conversation with the President in the White House on the phone when she found out that she was on the witness list and the President told her, you can make an affidavit.

Mr. STARR. That is correct, words to that effect.

Mr. SCHIPPERS. The affidavit of course would be for the purpose of avoiding testimony; isn't that correct, Judge Starr?

Mr. STARR. Yes, that is correct.

Mr. SCHIPPERS. And in order to accomplish that purpose, both the President and Ms. Lewinsky were fully aware that that affidavit would have to be a lie; isn't that right?

Mr. STARR. Yes.

Mr. SCHIPPERS. And it was the President's suggestion that she make that affidavit, according to her testimony?

Mr. STARR. According to her testimony, yes.

Mr. SCHIPPERS. We might as well be complete about these tabs when we are going over them. We are going to talk a little bit about fairness, if I may.

The President of the United States testified before a grand jury, did he not, Judge Starr?

Mr. STARR. Yes, he did.

Mr. SCHIPPERS. And he was permitted to testify by videotape or by closed circuit television from the White House, was he not?

Mr. STARR. Yes, he was.

Mr. SCHIPPERS. How often is a perspective witness before the grand jury permitted to testify from home?

Mr. STARR. Very rarely. Usually—

Mr. SCHIPPERS. So that was being overly fair to the President by letting him testify from there, isn't that right?

Mr. STARR. We tried to respect the dignity of the Presidency and the President, and we readily agreed to provide this alternative mechanism at Mr. Kendall's request to his actual appearance before the grand jury.

Mr. SCHIPPERS. Also, the President was permitted to have his attorney sitting with him and to consult with that attorney; isn't that correct?

Mr. STARR. Yes. Mr. Kendall and Ms. Seligman and—

Mr. SCHIPPERS. How many perspective witnesses before a grand jury are permitted to bring their lawyer into the grand jury room with them?

Mr. STARR. None. It is inconsistent—

Mr. SCHIPPERS. Except the President.

Mr. STARR. —with grand jury practice.

Mr. SCHIPPERS. So another favor to the President in the interest of fairness; is that correct?

Mr. STARR. That's correct.

Mr. SCHIPPERS. The President was permitted to read a statement before he began to testify. How many witnesses in a grand jury are permitted to read a statement of their own before testifying?

Mr. STARR. Ordinarily, it is not done. They are there to answer questions that the prosecutors and the legal advisors to the grand jury or the grand jurors themselves have.

Mr. SCHIPPERS. The President was originally subpoenaed to appear before a grand jury?

Mr. STARR. Yes, he was, after he had declined six invitations to testify.

Mr. SCHIPPERS. And as an accommodation to the President, you and your staff withdrew that subpoena and allowed him the courtesy of appearing quote, "voluntarily?"

Mr. STARR. Yes, at Mr. Kendall's request.

Mr. SCHIPPERS. Once again being eminently fair to the President.

Mr. STARR. We acceded to his request. We did try and do try to be fair.

Mr. SCHIPPERS. Now, Judge Starr, when an individual testifies before a grand jury, that individual has three choices. He can tell the truth, one; he can lie, two; or he can assert his Fifth Amendment privilege not to testify because his answers might tend to incriminate him; isn't that correct?

Mr. STARR. Yes.

Mr. SCHIPPERS. When an individual is questioned in a grand jury, is he permitted to say, I stand on my statement in lieu of taking the Fifth?

Mr. STARR. No.

Mr. SCHIPPERS. But the President was allowed to do that, was he not?

Mr. STARR. He was.

Mr. SCHIPPERS. So much for the unfairness of the grand jury.

You were also asked by some of the members here, and a great, great deal was made that none of these individuals in the grand jury were subjected to cross examination, and that is true; none of them were?

Mr. STARR. That is correct.

Mr. SCHIPPERS. Are you aware of any grand jury proceeding in which the defense is permitted to come in and cross-examine the witnesses before the grand jury?

Mr. STARR. Absolutely not.

Mr. SCHIPPERS. It is unbelievable, isn't it?

Mr. STARR. It is completely outside the contemplation of grand jury practice, because that is not the function of the grand jury; it is to gather information and to determine whether there is probable cause to believe that a criminal offense may have been committed.

Mr. SCHIPPERS. That's right. Now, the cross examination is for the trial; is it not?

Mr. STARR. Yes, absolutely.

Mr. SCHIPPERS. Now, if I could change horses a little bit and go to the impeachment proceeding, the Constitution provides that the sole power of impeachment resides in the House of Representatives; isn't that correct?

Mr. STARR. That is correct.

Mr. SCHIPPERS. And that is in the nature of a grand jury proceeding which results in a charge; isn't that right?

Mr. STARR. That's right.

Mr. SCHIPPERS. So there should be no cross examination at that stage of the proceeding either, should there?

Mr. STARR. That is entirely within your prerogative, but to the extent that you are mirroring the grand jury, there is no cross examination.

Mr. SCHIPPERS. Well, over and above that, Judge Starr, the Constitution further provides that the sole power to try an impeachment resides in the Senate; isn't that correct?

Mr. STARR. That is true.

Mr. SCHIPPERS. So if this House were to permit cross examination and to hold a mini trial here, they would be usurping the constitutional duties of the United States Senate; isn't that correct?

Mr. STARR. Well, I am not sure I would necessarily agree with that, because I think—

Mr. SCHIPPERS. I hear the moaning from the left.

Mr. STARR. I think, I think—

Mr. HYDE. Does somebody need aspirin?

Mr. STARR. But I think there are substantial—I shouldn't be advising the House of Representatives in terms of its prerogatives, but it seems to me that under the Constitution you have extraordinary latitude under whatever the Rules of the House under which you are operating to determine how to proceed. But you are quite right, the Constitution contemplates the trial to be in the Senate, and what you are quite rightly saying is, if one is saying, "let's have a trial," you might have the raw power to do it, but it is almost as if, well, that doesn't count, because the real issue is, is there substantial, or whatever the standard is, that the House of Representatives sees fit to articulate as its operative standard.

Mr. SCHIPPERS. Now, Judge, let's do some fairness comparing here. Did anybody in the grand jury, while the President was testifying, laugh at him?

Mr. STARR. Yes.

Mr. SCHIPPERS. Who?

Mr. STARR. Members of the grand jury.

Mr. SCHIPPERS. And when was that, Judge Starr? While the President was testifying and telling what he told the grand jurors, they were laughing at him; is that right, sir?

Mr. STARR. I understand that there were some occasions where one or more grand jurors, at least that is my understanding. But I want to protect the confidentiality of the grand jury process and deliberative process, even though you have all the transcripts and the like. I would just rely on what the transcripts say.

Mr. SCHIPPERS. All right. When the President was asked questions, he was asked questions one at a time; was he not?

Mr. STARR. Yes.

Mr. SCHIPPERS. And they were relatively simple questions and he was permitted to give full and complete answers, isn't that correct?

Mr. STARR. Yes.

Mr. SCHIPPERS. He wasn't asked six or eight questions at a time running over a 4 or 5-minute period and then given 10 seconds to answer, was he?

Mr. STARR. Definitely not.

Mr. SCHIPPERS. Now, by the way, did anybody cut off the President when he tried to answer questions?

Mr. STARR. No, I don't think there was any episode when we cut off the President. Although may I say, we were operating as well under very strict limitations, and we did want to proceed with additional questions, and the grand jury had questions, but Mr. Kendall did enforce the understanding that we had, which was a 4-hour session by the President, and we abided by that. And I don't mean to sound quarrelsome in suggesting that Mr. Kendall was not within his rights. He was.

Mr. SCHIPPERS. Now, Judge, there has been a lot of talk in the public domain and on the television and things that this is—that all the President did was deny sex, deny a sexual relationship with an intern. He went a lot further than that, didn't he? For an example, with Mr. Blumenthal?

Mr. STARR. Yes.

Mr. SCHIPPERS. As a matter of fact, before Mr. Blumenthal came in to testify, he was subjected to an elaborate, elaborate lie by the President concerning the relationship with Monica Lewinsky.

Mr. STARR. Yes, he was.

Mr. SCHIPPERS. If I may, the President told Mr. Blumenthal that Monica made sexual demands upon him which he rebuffed. Is that right? And that was not true, was it?

Mr. STARR. That was not true.

Mr. SCHIPPERS. He also said that Monica Lewinsky threatened to claim an affair and he wouldn't go along with it; that he had been threatened by Monica Lewinsky; is that right?

Mr. STARR. Yes.

Mr. SCHIPPERS. Now, this is at a time when the President thought that it was a one-on-one with Monica Lewinsky, didn't he?

Mr. STARR. I believe that is what he thought at that time.

Mr. SCHIPPERS. And this would have been a perfect answer. "She threatened to say I had sex with her if I didn't do something for her. I didn't do something, therefore, everything she is saying is a lie."

Mr. STARR. It would be a very good answer.

Mr. SCHIPPERS. It has been suggested that your people used the young lady and betrayed the young lady. Wouldn't that more properly belong to the President of the United States?

Mr. STARR. Well, I am not sure I should be the one to pass judgment, but we certainly did not betray Ms. Lewinsky. We were doing our job, and we certainly never took any steps other than to try to vindicate the interests of the criminal law.

Mr. HYDE. Mr. Schippers, your time has expired. Do you need additional time?

Mr. SCHIPPERS. If I may, and if Judge Starr can stand it. I will not need a great deal more, Mr. Chairman.

Mr. HYDE. All right. I will allow an additional 15 minutes, and maybe you won't use that, said he hopefully, prayerfully.

Mr. SCHIPPERS. There has been some suggestion, Judge, that this was merely a private crime. The United States Constitution provides for three branches of government, does it not, coequal branches?

Mr. STARR. That is correct.

Mr. SCHIPPERS. And the judiciary is coequal with the executive?

Mr. STARR. Absolutely.

Mr. SCHIPPERS. Did I understand you earlier to say that lying under oath, perjury, and obstruction of justice strikes at the very heart of the judicial system of the United States?

Mr. STARR. Absolutely, and I think every judge would agree with that, that this is absolutely inimical to the judicial functioning. It is inimical to our court system.

Mr. SCHIPPERS. And under the Constitution of the United States, if the judicial system is destroyed, that is destroying one of the constitutional portions of our government; isn't it?

Mr. STARR. No question that from the founding of the Republic, the importance of our judiciary as an enforcer of rights and the vindicators of rule of law is absolutely critical.

Mr. SCHIPPERS. So when the President of the United States lies under oath, a civil or criminal case, grand jury or other, and obstructs justice, civil or criminal, grand jury or other, he is effectively attacking the judicial branch of the United States constitutional government, isn't he?

Mr. STARR. That is the way I would view it.

Mr. SCHIPPERS. And a President takes the oath that he will faithfully execute the Office of President of the United States, and will, to the best of his ability, preserve, protect and defend the Constitution of the United States, right?

Mr. STARR. Right.

Mr. SCHIPPERS. That is not defending, is it?

Mr. STARR. No, it is not.

Mr. SCHIPPERS. There is a term that has stuck in my brain from these transcripts that I have read, and that is mission accomplished.

When Webb Hubbell needed help, Vernon Jordan got somebody at Revlon or the parent company of Revlon to put him on retainer for no work, right?

Mr. STARR. Essentially no work.

Mr. SCHIPPERS. So, Vernon Jordan, mission accomplished.

When Monica was looking for a job, and it became very urgent for her to get a job, Mr. Jordan again accomplished his mission.

Mr. STARR. Yes, he did.

Mr. SCHIPPERS. When Ms. Currie, when they wanted to get rid of the gifts, Ms. Currie went and picked them up, put them under her bed to keep them from anybody else. Another mission accomplished?

Mr. STARR. That's right.

Mr. SCHIPPERS. By the way, there has been some talk here that Monica said that she recalled that Betty Currie called her and said, either the President wants me to pick something up, or I understand you have something for me to pick up. Later, Ms. Currie backed off of that and said, well, I am not sure, maybe Monica called me. In the material that you made available, you and your

staff made available to us, there were 302s in which Monica said, I think when Betty called me, she was using her cell phone. Do you recall that, Judge Starr?

Mr. STARR. I do.

Mr. SCHIPPERS. And in that same material that is in your office that both parties were able to review and that we did, in fact, review, there are phone records of Ms. Currie; are there not?

Mr. STARR. There are.

Mr. SCHIPPERS. And there is a telephone call on her cell phone to Monica Lewinsky's home on the afternoon of December 28, 1997; isn't there?

Mr. STARR. That is correct.

Mr. SCHIPPERS. Once again, Monica is right and she has been corroborated, right?

Mr. STARR. That certainly tends to corroborate Ms. Lewinsky's recollection.

Mr. SCHIPPERS. By the way, they did find some of the billing records from the Rose firm in the attic of Vince Foster's home.

Mr. STARR. Yes, that is correct.

Mr. SCHIPPERS. They weren't under the bed, were they?

Mr. STARR. No, they were in the attic.

Mr. SCHIPPERS. I am sorry.

Now, when Ms. Lewinsky was subpoenaed, Mr. Jordan contacted the President and then got Ms. Lewinsky an attorney, Mr. Carter, is that right?

Mr. STARR. That is correct.

Mr. SCHIPPERS. Another mission accomplished.

When Monica did her job search and she signed a false affidavit, the next day she was down in New York or up in New York trying to get a job; isn't that right?

Mr. STARR. I believe it was the next day, yes.

Mr. SCHIPPERS. And she couldn't get a job because she kind of didn't do a very good job on the interview.

Mr. STARR. She did not feel that the interview had gone well and she was not given a job offer, and that concerned her and she expressed that concern.

Mr. SCHIPPERS. This is when Mr. Jordan called the chairman of the board and got her the job.

Mr. STARR. He certainly—yes. He called Mr. Perelman and Mr. Perelman then made a call and she was reinterviewed and she was hired.

Mr. SCHIPPERS. So Mr. Jordan at that time knew that the false affidavit had been signed and that he had had a job for Monica, and he went to see the President of the United States and said, mission accomplished, didn't he?

Mr. STARR. Well, in fairness to Mr. Jordan, he knew the affidavit had been signed; the rest I am sure would be in some dispute, but yes, that is—

Mr. SCHIPPERS. Well, he knew the affidavit had been signed and he knew that the job had been gotten and he went into the President and said, "Mission accomplished."

Mr. STARR. Yes, that is correct.

Mr. SCHIPPERS. We don't know which he was referring to, whether it was the job or we got the affidavit signed, do we?

Mr. STARR. No, I don't think that we do know that. We just know that he said mission accomplished. I know he felt that he had, you know, engaged in a certain amount, a certain level of effort to secure that job for Ms. Lewinsky at Revlon.

Mr. SCHIPPERS. Now, Judge Starr, I only have a few more questions.

You are a senior partner in a major law firm, or you were before you took a leave of absence?

Mr. STARR. Yes, past tense.

Mr. SCHIPPERS. You are a recognized scholar in constitutional law and in law in general. You have been the Solicitor General of the United States; is that correct?

Mr. STARR. That is correct.

Mr. SCHIPPERS. Argued a number of cases before the Supreme Court of the United States?

Mr. STARR. That's correct.

Mr. SCHIPPERS. You have received honorary doctors of law degrees from six universities?

Mr. STARR. I think that is right.

Mr. SCHIPPERS. You have written numerous articles in various scholarly journals?

Mr. STARR. Yes. I have written a number.

Mr. SCHIPPERS. You have a completely unblemished career for your entire life as a lawyer, and you are looked upon in the profession as a man of honor, integrity and decency, is that right?

Mr. STARR. Well, I would like to think that at least once upon a time, that was the reputation.

Mr. SCHIPPERS. For the past year, you have been trashed in the newspapers, on television, and with snide backward remarks to which you could not reply, isn't that right, Judge Starr?

Mr. STARR. Well, I have chosen until now not to reply, but I think the code of silence at some times in terms of basic fairness gets to come to an end.

Mr. SCHIPPERS. And you have been pilloried and excoriated, charged with unbelievable things of which you are incapable of being guilty?

Mr. STARR. I cannot imagine me and my colleagues engaging in some of the suggested activities that have been described here seriously. We simply cannot in conscience live with one another as professionals, and I laid out in my opening statement the backgrounds of my colleagues, and I have been privileged to serve with two John Marshall award winners, and that is special at the Justice Department. That means there is no better trial lawyer in the Department of Justice recognized in a particular year, and I have been privileged to serve with two of them with public corruption chiefs. These are career civil servants, and it is not right and it is not fair to attack and calumny career civil servants. But for my part, I have learned that it goes with the Independent Counsel territory.

Mr. SCHIPPERS. And the Independent Counsel job, you didn't seek that, did you?

Mr. STARR. Absolutely not.

Mr. SCHIPPERS. You were asked to take it, and you tried to leave and your staff begged you to stay and you did stay; is that right?

Mr. STARR. All of that is true. I never sought this job. I am reminded of the old song about taking a job and what you can do with it, but it would be indecorous of me to say it. But no, I was asked to, by the Special Division to take on this responsibility; the three-judge panel saw fit to ask me to serve. I had been asked by Phil Heymann, who was Deputy Attorney General of the United States in January of 1994, whether I would be willing to be considered for appointment as the Whitewater counsel under Ms. Reno to be appointed by Janet Reno. Happily for me, she wisely chose Bob Fiske. Unhappily for me, the Special Division chose me.

Mr. SCHIPPERS. You have been given a duty that you did not seek, and you have performed that duty to the best of your ability; is that correct, sir?

Mr. STARR. I have certainly tried, and I do it to the best of my ability, and I am proud of what we have been able to accomplish. As I indicated earlier, the records of convictions obtained, but also, the decisions not to seek an indictment, the decision to issue thorough reports, all of that is part of what we have co-labored together, with Mr. Kendall pointing out the number of persons involved in the investigation. I am proud of those persons. They are my colleagues, and they have become my friends, and they have worked very long and very hard under very difficult circumstances, and recognizing, and we are big, big boys, and I mean that in a gender-neutral way. So when we were accused in Arkansas of a political witch-hunt, we took it and we did our arguing in court, and we proved to the satisfaction of a fair-minded jury with a very distinguished judge that the sitting governor and the President and the First Lady's business partners were guilty of serious felonies, and we had been listening month after month to "it's a political witch-hunt," and that was unfair, but we learned that goes with this territory.

Mr. SCHIPPERS. Judge, for all that doing your duty, you have been pilloried and attacked from all sides, is that right.

Mr. STARR. I would hope not all sides, but yes, that's—

Mr. SCHIPPERS. Well, sometimes it seems like all sides.

How long have you been an attorney, Judge Starr?

Mr. STARR. 25 years.

Mr. SCHIPPERS. Well, I have been an attorney for almost 40 years, and I want to say I am proud to be in the same room with you and your staff.

Mr. STARR. Thank you, Mr. Schippers.

Mr. SCHIPPERS. Thank you.

Ms. JACKSON LEE. Mr. Chairman.

Mr. HYDE. The gentlewoman from Houston.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I indicated I had a point of order. This might be more preferable as a point of clarification, and that is, I know it is extremely late in the evening, Mr. Starr, but Mr. Chairman, did I understand Mr. Starr to state that we would not expect any referrals on Filegate, Travelgate, and Watergate—excuse me, Whitewater, it has been many years—as relates to the provision in the Constitution on impeachment? Did I hear that correctly?

Mr. Chairman, I had in addition to add to the record a question as to whether or not because of the shortness of the time of questioning, whether or not Mr. Starr would be able to answer, as he indicated I believe to many members that he would be willing to answer some of our questions in writing. For example, as to the question I had of his firsthand knowledge of any details in that referral.

Ms. JACKSON LEE. But Mr. Chairman, excuse me. It is late into the evening. And I do want to add *United States v. Birdman*, 602 F. 2d 547 (3rd Circuit, 1979). I would like to ask to have it submitted into the record, as it deals with the statement that courts have shared the legal profession's disapproval of the liberal role of an advocate witness.

Mr. HYDE. The gentlelady has had her time now.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. HYDE. Do you have a specific request?

Ms. JACKSON LEE. Yes, Mr. Chairman. I would like the specific question answered as to the referrals on Whitewater, Travelgate and Filegate.

Mr. HYDE. Okay. Mr. Starr, can you answer that?

Mr. STARR. I am sorry. The opening statement spoke to the FBI files and Travel Office matter. I did not comment beyond those two matters.

Ms. JACKSON LEE. What did you say on those matters, Mr. Starr? That is what I asked.

Mr. HYDE. Well, if the gentlelady would read the report.

Mr. STARR. When I say I didn't comment with respect to the conclusion of such matters, the opening statement speaks for itself, and I think we can, in fact, have that as part of the record.

Mr. HYDE. Well, it is part of the official record.

Mr. STARR. Yes.

Mr. HYDE. Very well.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. HYDE. Thank you, Judge Starr, for a wonderful day. Thank you.

Mr. STARR. Thank you.

Mr. HYDE. Everybody stay, please. The committee will stay. We are going to have a meeting.

Ladies and gentlemen, the committee hearing stands adjourned, but the committee will remain here for a very short meeting.

Pursuant to notice and subject to the authority granted in H. Res. 581, I now move that the committee authorize the issuance of subpoenas for the following individuals: Daniel Gecker, Nathan Landow and Bob Bennett.

Mr. NADLER. Mr. Chairman. Mr. Chairman. The room is not in order, and I cannot hear you.

Mr. HYDE. Mr. Nadler.

Mr. NADLER. The committee is not in order, and I cannot hear you.

Mr. HYDE. Okay. I will try it again.

Pursuant to notice, subject to the authority granted in H. Res. 581, I now move that the committee authorize the issuance of subpoenas for the following individuals: Daniel Gecker, Nathan Landow, Bob Bennett.

Mr. NADLER. Mr. Chairman.

Mr. HYDE. Is there any objection?

Mr. NADLER. Mr. Chairman.

Mr. HYDE. Mr. Nadler.

Mr. NADLER. Mr. Chairman, I would like to know the response for those subpoenas, in particular Mr. Gecker.

Mr. HYDE. If the gentleman will permit me, if we have to go into it, we have to go into executive session to do that.

Mr. NADLER. Let me ask one question which may not have to go into executive session.

Mr. HYDE. Okay. What is it?

Mr. NADLER. Mr. Gecker, I believe, is Ms. Willey's lawyer. I presume he may avail himself of the attorney/client privilege claim, in fact he might have to. If you need information about the Willey case, why call the lawyer? Why not call the witness directly?

Mr. HYDE. Well, I can't answer that, but I will say the attorney/client privilege does not overwhelm an impeachment committee.

Is there any objection to the approval of the three subpoenas?

Mr. SCOTT. Reserving the right to object.

Mr. HYDE. Mr. Scott.

Mr. SCOTT. Reserving the right to object, Mr. Chairman.

Mr. HYDE. Do you want to put your mike on?

Mr. SCOTT. Mr. Chairman, are we—am I to assume by the issuance of these subpoenas that we are not confining the inquiry to the Starr allegations?

Mr. HYDE. What we are doing is pursuant to the House Resolution 581. It is pursuant to that resolution.

Mr. SCOTT. Well, Mr. Chairman, reserving the right to object.

Mr. HYDE. The gentleman reserves the right to object.

Mr. SCOTT. Mr. Chairman, I would just say that at some point, I would appreciate it if we would focus the inquiry into specific allegations so we know what we are investigating.

We are now not focused on the Starr allegations. I have no idea what the allegations are going to be, and if we are to conduct an inquiry that we can conclude at some point in the foreseeable future, we have to focus on certain allegations that might be impeachable offenses.

Mr. HYDE. Mr. Scott, this is focusing on material the committee has received in executive session. We have that material.

Mr. SCOTT. Mr. Chairman, I withdraw my reservation.

Mr. HYDE. I thank the gentleman.

Mr. WATT. Mr. Chairman.

Mr. HYDE. Mr. Watt.

Mr. WATT. Reserving the right to object.

Mr. HYDE. The gentleman reserves the right to object.

Mr. WATT. The motion that I am reserving, the unanimous consent request that I am reserving the right to object to, is to authorize the subpoenas; is that correct?

Mr. HYDE. Yes.

Mr. WATT. Okay. Mr. Chairman—

Mr. HYDE. These are subpoenas for depositions.

Mr. WATT. I don't feel like I can pass on that without having some background information, and I understand—

Mr. HYDE. We have to go into executive session.

Mr. WATT. Well, then, that is—I hate to put us to that burden, but I don't know how I can pass on it without having some more information.

Mr. HYDE. We will go into executive session. We will have to clear the room.

Mr. SCHUMER. Wait, Mr. Chairman.

Mr. HYDE. What?

Mr. SCHUMER. Mr. Chairman, a question. Why do we have to be in executive session to debate this?

Mr. HYDE. Because the material to explain the rationale for wanting these depositions is material that is executive material.

Mr. WATT. Well, with respect, Mr. Chairman, I don't feel like I can vote—I can sit here and not object without understanding the rationale myself.

Mr. HYDE. I understand, and we are perfectly willing to go into executive session.

Mr. WATT. I am not trying to violate the executive rule.

Mr. SCHUMER. Will the chairman yield?

Mr. HYDE. Yes, I will yield.

Mr. SCHUMER. I mean, look, it seems—I am befuddled by why we are doing this. I understand—

Mr. HYDE. We wish to take depositions of these three people.

Mr. SCHUMER. I understand that.

Mr. HYDE. And we will explain that in executive session.

Mr. SCHUMER. If I might make my point, sir—

Mr. HYDE. Sure.

Mr. SCHUMER [continuing]. Which is I think the public, most of which is wondering why this is dragging on and on, also has a right to know why we are doing this. So what I would suggest, what I would suggest, is that we discuss as much of the rationale for this as we can out of executive session so the public can hear, and then if there are any specific references as to why we have to go into executive session—about materials that are gathered in executive session, we can go in for that portion.

Mr. HYDE. Mr. Schumer, we can't really discuss really anything around the edges even without transgressing on executive session material. So let's just go into executive session.

Mr. SCHUMER. Well, then what I would move, Mr. Chairman—I have no problem with us going into an executive session, but then I would like for us to be able to discuss the rationale for this without using executive session material in public session, and that is the move I would—that is what I would propose.

Mr. HYDE. Well, we can't do it. We are going to have to go into executive session.

Mr. FRANK. Mr. Chairman, if I could be heard on the motion?

Mr. HYDE. Yes, you may.

Mr. FRANK. Mr. Chairman, I know it is late, but we didn't decide—and you have been accommodating to us in some regards, but we didn't decide to do this all in 1 day, and I do not think it is legitimate to constrain members by running too much in 1 day and then saying, oh, it is getting late in the day.

Then do it tomorrow. We have been spending—many of us felt that we should have started this a while ago. You waited until No-

vember 18th or 19th. Then you put it all in 1 day. It is simply not legitimate then to argue the time constraints.

I think this committee has erred grievously by going into executive session and discussing things in executive session that ought to be discussed publicly. It is very, very strange to have these arguments about the need for the public to know, et cetera, et cetera, and we do it all in secret. This is the committee that released grand jury information on the television. We made history in denying what has traditionally been something that would be kept somewhat private, and we do these—we debated doing that in a private session.

There is simply a great abuse of this. And again, I have to say then adjourn, come back tomorrow, come back next week. You know, as far as these depositions are concerned that were so important, I don't know why they weren't taken in September or October or earlier in November. I don't know how they became an emergency overnight.

The fact is that you have, I think, overused the executive session. There are very important questions, and it is simply inconsistent to say this is a terribly important issue to the American people, people need to know about it, and we will go into secret and make all the decisions. Virtually every decision this committee has made it has made in secret, and it is simply an inconsistent position to talk about the important public issues that are involved here by going into it in secret.

Mr. HYDE. All right. The gentleman has made his point.

Mr. FRANK. No, excuse me, Mr. Chairman. I think I have 5 minutes. I am sorry. Look, I didn't decide that we would try to do it all in 1 day, but having decided to do it all in 1 day, you can't use that against us, and you can't use that to constrain things.

You know, isn't it somewhat paradoxical? We talk about how important this issue is. We talk about this is such a fundamental constitutional question, but we have to worry because it is getting late? Then don't schedule us so that you constrain the most important thing we could possibly be talking about by the clock. Then let it go over to tomorrow. Let it go over until the next week. We should have been doing it a month ago. I will not be constrained by a self-imposed handicap of the clock.

And I still do not think we should go into executive session without some justification as to why we have to go into executive session. We are not discussing national security. We are not discussing anything that is going to give anything away to anybody. We are not tipping off anybody. So I do not understand, and I think we have a right to be told, why we have to go into executive session.

Mr. BERMAN. Mr. Chairman.

Mr. HYDE. I thank the gentleman. There is a motion before us—

Mr. BERMAN. Mr. Chairman.

Mr. HYDE. —before the committee, to authorize the issuance of these subpoenas, and the clerk will call the roll.

Mr. FRANK. Mr. Chairman, there are members—point of order, Mr. Chairman.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. FRANK. Mr. Chairman, in the interest of fairness, do you think by cutting off members seeking recognition—

The CLERK. Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Mr. FRANK. This is unworthy of you, Mr. Chairman.

Mr. HYDE. All right. Hold it.

Mr. BERMAN. Mr. Chairman.

Mr. FRANK. There were members seeking recognition.

Mr. HYDE. Mr. Berman.

Mr. BERMAN. Mr. Chairman, earlier today you made a ruling, which I agreed with, on a point of order raised by the gentlelady from Texas that with respect to the jurisdiction for this inquiry, the House has spoken.

The House did not mandate this committee to investigate everything under the sun. It allowed this committee to conduct an inquiry on anything under the sun.

We have the authority to decide what we are going to investigate.

Mr. Schumer makes a point. When you issue subpoenas for people involved in the Kathleen Willey case, the implication is that that matter becomes part of the impeachment inquiry.

Everyone on this side of the aisle voted to limit the inquiry to the Monica Lewinsky referral. The Independent Counsel has not made a referral on the Kathleen Willey case. He has not found substantial and credible information that conduct by the President in that matter may justify impeachment—that finding has not been made, and that referral has not been made.

So there should be a bifurcation. First, the issue of whether we go into this line of inquiry is something that should be discussed in open session. Then, if our position is lost, then in executive session the justification for the subpoenas can be raised. That is the only question that I have, and that is why I think we should be able to get the justification for the subpoenas if we decide we are launching into that inquiry, and I sure hope we don't.

Mr. SCHUMER. Just would the gentleman yield?

Mr. BERMAN. I would be happy to.

Mr. SCHUMER. I would like to finish my point from before. Could the Chair give us some—without treading on executive session or anyone's confidentiality being disclosed, could the chairman give us some idea why these three people were chosen and not others, and where the Chair intends to take this—these depositions? What is the point?

We already have heard from Mr. Starr that he doesn't think the Willey episode rises to a level of impeachment. In my judgment, he has a pretty low threshold for impeachment, and if he doesn't think that the Willey affair does, then that is pretty dispositive to me.

And here we are, with three completely—you know, yesterday we heard talk of John Huang. It was very hard to figure out what that was all about. Now we are hearing these three. One can only draw the conclusion, Mr. Chairman—Mr. Chairman, one can only draw

the conclusion, without hearing an explanation, that the majority doesn't quite know what to do here and is sort of prolonging this with whatever thing they can grab onto, because there is no logic to this, at least to me.

I would like to hear it, and I think the public is entitled to hear it. And I think in this case it could well be argued that executive session is being used as a shield because there is no good explanation as to why these three people are going to be deposed, why other people are not, and where the Chair and where the committee intends to take the depositions of these three people as, again, in—at least particularly in an area where the Office of Independent Counsel has said there is no impeachable offenses as far as it can see.

Mr. HYDE. All right. The Chair——

Mr. WATT. Mr. Chairman.

Mr. HYDE. The Chair will declare a 5-minute recess.

[Recess.]

Mr. HYDE. The committee will come to order. The committee will come to order.

I move that pursuant to Rule 11 Clause 2(g)(1), this committee meeting be conducted in executive session. The clerk will call the roll.

Mr. SCHUMER. I move the previous question.

Mr. HYDE. It is nondebatable.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. Gekas.

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas votes aye.

Mr. Coble.

[No response.]

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly votes aye.

Mr. Canady.

[No response.]

The CLERK. Mr. Inglis.

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis votes aye.

Mr. Goodlatte.

[No response.]

The CLERK. Mr. Buyer.

Mr. BUYER. Aye.

The CLERK. Mr. Buyer votes aye.

Mr. Bryant.

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant votes aye.

Mr. Chabot.  
[No response.]  
The CLERK. Mr. Barr.  
[No response.]  
The CLERK. Mr. Jenkins.  
Mr. JENKINS. Aye.  
The CLERK. Mr. Jenkins votes aye.  
Mr. Hutchinson.  
[No response.]  
The CLERK. Mr. Pease.  
Mr. PEASE. Aye.  
The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
Mr. CANNON. Aye.  
The CLERK. Mr. Cannon votes aye.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
Mr. GRAHAM. Aye.  
The CLERK. Mr. Graham votes aye.  
Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers. Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
[No response.]  
The CLERK. Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.  
Mr. NADLER. No.  
The CLERK. Mr. Nadler votes no.  
Mr. Scott.  
Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. No.  
The CLERK. Ms. Lofgren votes no.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.

[No response.]  
The CLERK. Mr. Meehan.  
[No response.]  
The CLERK. Mr. Delahunt.  
Mr. DELAHUNT. No.  
The CLERK. Mr. Delahunt votes no.  
Mr. Wexler.  
Mr. WEXLER. No.  
The CLERK. Mr. Wexler votes no.  
Mr. Rothman.  
[No response.]  
The CLERK. Mr. Barrett.  
Mr. BARRETT. No.  
The CLERK. Mr. Barrett votes no.  
Mr. Hyde.  
Mr. HYDE. Aye.  
The CLERK. Mr. Hyde votes aye.  
Mr. BERMAN. Mr. Chairman.  
Mr. HYDE. The gentleman from California, Mr. Berman.  
Mr. BERMAN. Mr. Berman votes no.  
The CLERK. Mr. Berman votes no.  
Mr. HYDE. The gentlelady from California, Ms. Waters.  
Ms. WATERS. Votes no.  
The CLERK. Ms. Waters votes no.  
Mr. HYDE. Mr. Chabot.  
Mr. CHABOT. Aye.  
The CLERK. Mr. Chabot votes aye.  
Mr. HYDE. Mr. Canady.  
Mr. CANADY. Aye.  
The CLERK. Mr. Canady votes aye.  
Mr. HYDE. Mr. Goodlatte.  
Mr. GOODLATTE. Aye.  
The CLERK. Mr. Goodlatte votes aye.  
Mr. HYDE. Have all voted who wish?  
Mr. HUTCHINSON. Mr. Chairman.  
Mr. HYDE. Mr. Hutchinson.  
Mr. HUTCHINSON. Aye.  
Mr. HYDE. Mr. Meehan.  
The CLERK. Mr. Hutchinson votes aye.  
Mr. MEEHAN. No.  
The CLERK. Mr. Meehan votes no.  
Mr. HYDE. The clerk will report.  
The CLERK. Mr. Chairman, there are 19 ayes and 15 noes.  
Mr. HYDE. The motion is agreed to and the House, that is the committee—  
Mr. SCHUMER. Point of order, Mr. Chairman.  
Mr. HYDE. —will stand at ease while we clear the room.  
Mr. SCHUMER. Point of order before that, Mr. Chairman.  
Mr. HYDE. Yes, Mr. Senator.  
Mr. SCHUMER. Mr. Chairman, according to the rules, at least a cursory review of the rules, a move to go into executive session is indeed debatable.  
Mr. CONYERS. Yes.

Mr. SCHUMER. It is indeed debatable, and you said it was not debatable. I would ask—

Mr. HYDE. I was so informed by staff.

Mr. SCHUMER. Could counsel make a ruling on that, please, and point to the relevant part of our rules which shows that it is? I mean, now we are really flying by the seats of our pants.

Mr. BUYER. I moved the previous question, Mr. Chairman.

Mr. SCHUMER. You did, and I just made the point of order.

Mr. HYDE. Your point of order is well taken. It is debatable. I was informed it was not.

Mr. SCHUMER. Thank you, Mr. Chairman.

Mr. HYDE. But do you want to debate this some more now?

Mr. SCHUMER. Yes.

Mr. HYDE. Well, you have already spoken, so Mr. Nadler is recognized.

We will undo the roll call. We will dump the roll call and start again.

Mr. CONYERS. Dump the roll call.

Mr. HYDE. Ms. Jackson Lee will be next.

Mr. NADLER. Could the committee be in order?

Mr. HYDE. Okay. Go ahead, Mr. Nadler. I am all ears.

Mr. NADLER. Regular order. The room is too noisy.

Mr. HYDE. The room won't be cleared until we go into executive session.

Mr. NADLER. I didn't ask for it to be cleared. I simply asked for it to be quiet.

Mr. HYDE. Oh, quiet. Okay.

Mr. NADLER. I do not want it cleared.

Mr. Chairman, we should not go into executive session until a reason is given as to why we are going into executive session.

Number two, before we talk about these subpoenas, we should have some basic idea of why we are being asked for these subpoenas. Specifically the subpoenas apparently relate to the Kathleen Willey matter which, as Mr. Schumer pointed out, the special prosecutor says raises no questions that rise to the level of possible impeachable offenses. And so I would want to know, does this relate to the Willey matter? If it doesn't, does it relate to something else? And why are we being asked for this?

I can't believe that some reason can't be given in public session.

Thirdly, if we are to have a motion to go into executive session, I would ask that the motion say go into executive session and then come back into open session so we can address whatever it is we can address publicly, because I believe we owe that to the public.

Mr. HYDE. Will the gentleman yield?

Mr. NADLER. Yes.

Mr. HYDE. The gentleman can make that motion when we are in executive session.

Mr. NADLER. No. I think we have to make that motion now. That ought to be a condition of our going into executive session.

Mr. HYDE. I don't agree with that.

Mr. NADLER. Because if we make that motion in executive session, and it is voted down, we can't even say it was voted down.

Mr. HYDE. That is true.

Mr. NADLER. And that is not right.

Mr. HYDE. The gentleman has it exactly right.

Mr. NADLER. But it is not the right thing to do or the right way to conduct our business.

Mr. HYDE. Okay. Are you through?

Mr. NADLER. I would move to amend the motion then.

Mr. HYDE. I hear you. Thank you.

Mr. NADLER. I move to amend the motion.

Mr. BUYER. Mr. Chairman, parliamentary inquiry.

Mr. HYDE. Mr. Buyer has a parliamentary inquiry.

Mr. NADLER. May I finish saying more on the amendment before his parliamentary inquiry?

Mr. HYDE. I am sorry. What?

Mr. NADLER. I said, could I finish stating the amendment before Mr. Buyer's parliamentary inquiry?

Mr. HYDE. Surely. You can finish anything you want.

Mr. NADLER. I move to amend the motion that after we go into executive session, when the executive session is completed, we come out and resume regular session and then discuss the matter of the proposed subpoenas to the extent we can, in public session, and that the vote on those subpoenas be held in public session.

Mr. HYDE. The clerk will call the roll. You have heard the motion.

You want to talk on the motion? Ms. Jackson Lee? Well, the amendment to the motion, that is right. Yes, Ms. Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I want to associate myself with the words of Mr. Nadler and his motion, for two reasons.

One, Mr. Chairman, you were quoted as saying that in spite of the resolution passed dealing with how we would proceed in this impeachment process, that you look to the end of 1998 to complete this process. I think it is important for the American people to know where we are going with this process, how long it will take, and how many people will be caught up in our web. Clearly, I think to go into executive session will preclude us from discussing this in an open manner as to whether this is going to go on and on and on and on.

We have determined today that the witness Mr. Starr has indicated that certain referrals would not come here. Are we now encouraging him to bring other referrals that he had not even contemplated or has already indicated there is no basis for bringing forward? And so I would just argue that we are not providing the direction and allowing for a discussion on whether or not we should go into executive session, and call witnesses, of course, we don't know for what basis we are calling them, then I would ask, Mr. Chairman, that we not go into executive session on these matters, and instead find out, as a whole, where we are going and when we will be able to complete this matter, in a timely manner. And I yield back.

Mr. HYDE. The gentleman from Indiana.

Mr. BUYER. Mr. Chairman, I am somewhat bewildered and confused, so I am going to ask a parliamentary inquiry. We had a motion here before the committee. I moved the previous question, and

then we had a vote. Now, I would like to ask the Parliamentarian why would that vote not stand?

Mr. HYDE. I will answer that. Because I told them that the motion was not debatable, and I was wrong. It was debatable. So I did not want to ram through something under the mistaken ruling of the Chair that it was not debatable. That is why. I made a mistake.

Mr. BUYER. Well, I will move the previous question on Mr. Nadler's amendment to the motion.

Mr. HYDE. The gentleman moves the previous question. All those in favor say aye.

Opposed, nay.

The ayes have it, and the previous question is moved.

The question now occurs on the motion of Mr. Nadler to go into executive session but then to hold an open session thereafter.

Mr. NADLER. And to vote in the open session.

Mr. HYDE. And to vote in the open session? What will we vote on?

Mr. NADLER. The discussion—

Mr. HYDE. I understand. The vote on the subpoenas.

Mr. NADLER. Let me clarify. The debate would be in the closed session. We come out of the debate whatever and discuss that which could be discussed in the open session, and then we would have the vote in the open session.

Mr. HYDE. We understand Mr. Nadler's motion. All those in favor say aye.

Opposed, no.

Mr. BERMAN. Roll call.

Mr. HYDE. Roll call.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. No.

The CLERK. Mr. Sensenbrenner votes no.

Mr. McCollum.

[No response.]

The CLERK. Mr. Gekas.

Mr. GEKAS. No.

The CLERK. Mr. Gekas votes no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith votes no.

Mr. Gallegly.

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly votes no.

Mr. Canady.

Mr. CANADY. No.

The CLERK. Mr. Canady votes no.

Mr. Inglis.

Mr. INGLIS. No.

The CLERK. Mr. Inglis votes no.

Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte votes no.

Mr. Buyer.

Mr. BUYER. No.

The CLERK. Mr. Buyer votes no.

Mr. Bryant.

Mr. BRYANT. No.

The CLERK. Mr. Bryant votes no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. Barr.

[No response.]

The CLERK. Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins votes no.

Mr. Hutchinson.

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson votes no.

Mr. Pease.

Mr. PEASE. Mr. Chairman, no.

The CLERK. Mr. Pease votes no.

Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon votes no.

Mr. Rogan.

Mr. ROGAN. Mr. Chairman, regrettably, before voting, I simply want to make sure I am clear on Mr. Nadler's motion, and I apologize for the confusion, but the noise and the rapidity with which this was moving was so quickly, and I wasn't able to get a clarification to my satisfaction.

Is the motion that we are debating upon now whether to debate the issuance of subpoenas in executive session?

Mr. NADLER. No. Could I clarify the amendment again?

Mr. HYDE. Yes, please.

Mr. NADLER. The amendment says we will go into executive session. We will discuss whatever we discuss in executive session. Then we will come out and resume the public session, debate whatever we can debate in the public session, and then vote in the public session.

Mr. ROGAN. With that elucidation, Rogan votes no.

The CLERK. Mr. Rogan votes no.

Mr. Graham.

Mr. GRAHAM. He is deliberating. No.

The CLERK. Mr. Graham votes no.

Mrs. Bono.

Mrs. BONO. No.

The CLERK. Mrs. Bono votes no.

Mr. HYDE. Mr. Barr.

Mr. BARR. No.

The CLERK. Mr. Barr votes no.

Mr. HYDE. Mr. McCollum.

Mr. MCCOLLUM. No.

The CLERK. Mr. McCollum votes no.

Mr. HYDE. The clerk will report.

Mr. CONYERS. Have we voted?

Mr. SCHUMER. Mr. Chairman, do we get to vote? Thank you, Mr. Floyd—I mean, Mr. Chairman.

Mr. HYDE. Haven't you ever heard of cut to the chase?

Mr. FRANK. Well, we didn't think we would be the ones that were cut.

Mr. HYDE. The clerk will continue to call the roll, and don't let me try that again.

The CLERK. Okay. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers votes aye.

Mr. Frank.

Mr. FRANK. Aye.

The CLERK. Mr. Frank votes aye.

Mr. Schumer.

Mr. SCHUMER. Aye.

The CLERK. Mr. Schumer votes aye.

Mr. Berman.

Mr. BERMAN. Aye.

The CLERK. Mr. Berman votes aye.

Mr. Boucher.

Mr. BOUCHER. Aye.

The CLERK. Mr. Boucher votes aye.

Mr. Nadler.

Mr. NADLER. Aye.

The CLERK. Mr. Nadler votes aye.

Mr. Scott.

Mr. SCOTT. Aye.

The CLERK. Mr. Scott votes aye.

Mr. Watt.

Mr. WATT. Pass.

The CLERK. Mr. Watt passes.

Ms. Lofgren.

Ms. LOFGREN. Aye.

The CLERK. Ms. Lofgren votes aye.

Ms. Jackson Lee.

Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee votes aye.

Ms. Waters.

Ms. WATERS. Aye.

The CLERK. Ms. Waters votes aye.

Mr. Meehan.

Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan votes aye.

Mr. Delahunt.

Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt votes aye.

Mr. Wexler.

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler votes aye.

Mr. Rothman.

Mr. ROTHMAN. Aye.

The CLERK. Mr. Rothman votes aye.

Mr. Barrett.

Mr. BARRETT. Aye.  
The CLERK. Mr. Barrett votes aye.  
Mr. Hyde.  
Mr. HYDE. No.  
The CLERK. Mr. Hyde votes no.  
Mr. WATT. Mr. Chairman.  
Mr. HYDE. The gentleman from North Carolina.  
Mr. WATT. I vote aye.  
The CLERK. Mr. Watt votes aye.  
Mr. Chairman, there are 16 ayes and 21 noes.  
Mr. HYDE. Mr. Nadler's motion is defeated.  
Mr. NADLER. Mr. Chairman.  
Mr. HYDE. The question occurs—  
Mr. NADLER. Mr. Chairman.  
Mr. SCHUMER. Mr. Chairman.  
Mr. HYDE. For what purpose does the gentleman seek recognition?  
Mr. NADLER. To offer an amendment.  
Mr. HYDE. The previous question has been moved.  
Mr. NADLER. I haven't heard the previous question moved.  
Mr. BUYER. I have now moved the previous question.  
Mr. NADLER. Excuse me.  
Mr. BUYER. I move we go into executive session.  
Mr. NADLER. Excuse me.  
Mr. HYDE. You are not recognized for that purpose. Let us move on.  
Mr. NADLER. No.  
Mr. HYDE. Come on.  
Mr. BUYER. Mr. Chairman, I move the previous question.  
Mr. NADLER. Mr. Chairman, it is not a dilatory amendment. You may even agreed to it.  
Mr. HYDE. You have spoken on this question already.  
Mr. NADLER. No, it is a new amendment. It is not the same question.  
Mr. HYDE. All right. What is your amendment?  
Mr. NADLER. My amendment is simply, Mr. Chairman, that the ayes and nays on the issuance of the subpoenas and the ayes and nays on the motion will be made public. I ask yes on executive session.  
Mr. HYDE. All right. The gentleman's motion is not in writing, but that is all right. We are accommodating tonight. You have heard the motion. All those in favor say aye.  
Opposed, nay.  
The ayes have it.  
Mr. BUYER. Mr. Chairman, I have a motion that this committee now move to executive session.  
Mr. HYDE. All those in favor of the motion say aye.  
Opposed, nay.  
The ayes have it.  
Mr. FRANK. Roll Call, Mr. Chairman.  
Mr. HYDE. Roll Call. Roll Call.  
The CLERK. Mr. Sensenbrenner.  
Mr. SENSENBRENNER. Aye.  
The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.  
Mr. McCOLLUM. Aye.  
The CLERK. Mr. McCollum votes aye.  
Mr. Gekas.  
Mr. GEKAS. Aye.  
The CLERK. Mr. Gekas votes aye.  
Mr. Coble.  
Mr. COBLE. Aye.  
The CLERK. Mr. Coble votes aye.  
Mr. Smith.  
Mr. SMITH. Aye.  
The CLERK. Mr. Smith votes aye.  
Mr. Gallegly.  
Mr. GALLEGLY. Aye.  
The CLERK. Mr. Gallegly votes aye.  
Mr. Canady.  
Mr. CANADY. Aye.  
The CLERK. Mr. Canady votes aye.  
Mr. Inglis.  
Mr. INGLIS. Aye.  
The CLERK. Mr. Inglis votes aye.  
Mr. Goodlatte.  
Mr. GOODLATTE. Aye.  
The CLERK. Mr. Goodlatte votes aye.  
Mr. Buyer.  
Mr. BUYER. Aye.  
The CLERK. Mr. Buyer votes aye.  
Mr. Bryant.  
Mr. BRYANT. Aye.  
The CLERK. Mr. Bryant votes aye.  
Mr. Chabot.  
Mr. CHABOT. Aye.  
The CLERK. Mr. Chabot votes aye.  
Mr. Barr.  
Mr. BARR. Aye.  
The CLERK. Mr. Barr votes aye.  
Mr. Jenkins.  
Mr. JENKINS. Aye.  
The CLERK. Mr. Jenkins votes aye.  
Mr. Hutchinson.  
Mr. HUTCHINSON. Aye.  
The CLERK. Mr. Hutchinson votes aye.  
Mr. Pease.  
Mr. PEASE. Aye.  
The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
Mr. CANNON. Aye.  
The CLERK. Mr. Cannon votes aye.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
Mr. GRAHAM. Aye.  
The CLERK. Mr. Graham votes aye.

Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
Mr. BERMAN. No.  
The CLERK. Mr. Berman votes no.  
Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.  
Mr. NADLER. No.  
The CLERK. Mr. Nadler votes no.  
Mr. Scott.  
Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. No.  
The CLERK. Ms. Lofgren votes no.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.  
Ms. WATERS. No.  
The CLERK. Ms. Waters votes no.  
Mr. Meehan.  
Mr. MEEHAN. No.  
The CLERK. Mr. Meehan votes no.  
Mr. Delahunt.  
Mr. DELAHUNT. No.  
The CLERK. Mr. Delahunt votes no.  
Mr. Wexler.  
Mr. WEXLER. No.  
The CLERK. Mr. Wexler votes no.  
Mr. Rothman.  
Mr. ROTHMAN. No.  
The CLERK. Mr. Rothman votes no.  
Mr. Barrett.  
Mr. BARRETT. No.  
The CLERK. Mr. Barrett votes no.  
Mr. Hyde.  
Mr. HYDE. Aye.  
The CLERK. Mr. Hyde votes aye.

Mr. Chairman, there are 21 ayes and 16 noes.

Mr. HYDE. And the motion is carried, and the committee will go into executive session, and we will stand at ease until the room is cleared.

[Whereupon the committee proceeded in Executive Session.]

